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SUPREME COURT OF THE UNITED STATES.

No. 77.

ISAAC S. BOWMAN, AND AL., AND ALBERT T. BURNLY, APP'TS,

vs.

ATHANASIUS WATHEN AND THE COMMON COUNCIL OF THE CITY OF JEFFERSONVILLE.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR INDIANA.

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S. D. Langtree, Print.

Pleas begun and holden at Indianapolis, in the District of Indiana, for the seventh circuit of the United States Circuit Court, on the third Monday in November, in the year of our Lord one thousand eight hundred and forty-one, and being the fifteenth day of the same month of November aforesaid, before the honorable Jesse L. Holman, District Judge of the United States for the District of Indiana, and sitting and acting as Circuit Judge in and for the circuit and district aforesaid:

ISAAC BOWMAN'S HEIRS, and A. T. BURNLY,
vs.
ATHANASIUS WATHEN, *et al.*
} In Chancery.

Be it remembered, that heretofore, to wit, on the twenty-first day of March, in the year of our Lord one thousand eight hundred and forty, came the complainants, by Brown and Sweetser, Esqrs., their solicitors, and filed in the office of the clerk of said court, their certain bill of complaint against the said defendants; which is in the words and figures following, to wit:

To the honorable the Judges of the Circuit Court of the United States for the District of Indiana.

Humbly complaining, your orators and oratrices, Isaac S. Bowman, George W. S. Bowman, Robert C. Bowman, Washington N. Bowman, —— Brinker, and Mary, his wife, formerly Mary Bowman, and Rebecca Bowman, all citizens of the State of Virginia, (the said Mary and Rebecca, infants under the age of twenty-one, by George W. S. Bowman and Isaac S. Bowman, their brothers and next friends,) and Albert T. Burnly, a citizen of the State of Kentucky, respectfully state to the court, that Isaac Bowman, the father of your complainants, Isaac, George, Robert, Washington, Mary, and Rebecca, was an officer in the Illinois Regiment, commanded by the ever-memorable and gallant George Rogers Clark, marched with said regiment, and assisted in the reduction of the posts of Kaskaskia and St. Vincent; and because of his services in that regiment, the said Isaac Bowman, now deceased, became entitled to his proportion of the one hundred and fifty thousand acres of land, granted by the State of Virginia to said George Rogers Clark, and the officers and soldiers of his regiment who marched with him when the posts of Kaskaskia and St. Vincent were reduced, and to the officers and soldiers that had since been incorporated in the said regiment.

The said tract of one hundred and fifty thousand acres, was so granted by the State of Virginia to the Illinois Regiment, was

especially referred to, and reserved in the cession by the State of Virginia to the United States, of the lands lying northwest of the river Ohio; that said tract of one hundred and fifty thousand acres was located on the Ohio river at the Falls, including the present towns of Clarksville and Jeffersonville, in the State of Indiana; that the said lands were divided, apportioned, and assigned in severalty to the officers and soldiers of said regiment, by commissioners appointed and authorised by the State of Virginia, to divide, apportion, and convey to those entitled, are facts connected with the general history of the country, interwoven with the title of the United States to the lands northwest of the Ohio river, and with the title of the sovereignty and territorial limits of the State of Indiana, as derived under the ordinances, resolutions, and laws, of the United States, for the government and division of the Northwestern Territory, and for admitting Indiana into the Union, known generally to the people of Indiana, and well known in particular to the defendants hereinafter named. In the division, apportionment, and assignment, in severalty amongst the officers and soldiers of said Illinois Regiment, as duly made by the board of commissioners, appointed and instituted for that purpose, a certain tract of land of five hundred acres on the Ohio river, known and described on the map and plan of their division and apportionment by number one (1), which includes the present town of Jeffersonville on the Ohio river, and within the county of Clark, and State of Indiana, was allotted, assigned, and conveyed, by the board of commissioners, to the said Isaac Bowman in his lifetime, in part of his portion of said one hundred and fifty thousand acres, due to him for his services in said regiment,—an abstract of which assignment and allotment to said Isaac Bowman, taken from the commissioners' books, as reported and remaining in the office of the recorder in said county of Clark, and duly certified, and made evidence according to the laws of the State of Indiana, in such cases made and provided, is herewith exhibited and referred to, and marked (A); and which is in the words and figures following, to wit:

Surveyed for Isaac Bowman.

Five hundred acres of land in the Illinois grant, number one (1), being part of his claim, allowed by the board of commissioners, beginning on the bank of Ohio at E. L. two white ash and two hickory trees upon corner of the one thousand acres laid off for the town of Clarksville; running thence north (with a line of said lower land) three hundred and seventy poles; crossing pond creek to E. K. two beeches; east one hundred and twenty poles, D. M. in a pond; south forty degrees, east three hundred poles to E. A.

two white oaks and a black oak, on the bank of the Ohio; thence down the said river with its meanders to the beginning.

W. CLARK, *P. S.*

1st March, 1786.

Plat delivered to A. C. White. Deed issued.

I, John Douthitt, Clerk for the Board of Commissioners of the Illinois grant, do hereby certify, that the above and foregoing field notes of the survey of five hundred acres of land, number one, from the Board of Commissioners to Isaac Bowman, are truly copied from the original book now in my office.

Given under my hand and seal, (having no seal of office,) this eleventh day of March, eighteen hundred and forty.

JOHN DOUTHITT, [SEAL.]

By virtue of which apportionment and conveyance, the said Isaac Bowman, the grantee, entered and was lawfully and in fact seised and possessed in fee simple of said tract of land, number one, aforementioned; being so lawfully entitled in severalty, the said Isaac Bowman did, by his certain deed bearing date on the eighth day of March, eighteen hundred and two, and herewith exhibited, marked B, and duly recorded in the proper office, in the county of Clark, and State of Indiana, and which is in the words and figures following, to wit:

To all to whom these presents shall come:

Know ye, that I, Isaac Bowman, of the county of Shenandoah, and Commonwealth of Virginia, for divers good causes and considerations me thereunto moving, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint Mr. John Gwathney, of the county of Jefferson, and Commonwealth of Kentucky, my true and lawful attorney, for me and in my name to lay off a town on a part of my tract of land, situate in the Illinois grant, known in the plan of said grant by the number one (1); to begin at the lower part of said tract on the Ohio river, and to contain about one hundred and fifty acres of the said tract of land; which I do authorise and empower the said John Gwathney to lay off into a town in any manner he may think most proper, and to vest all the right, title, and interest which I have in the said one hundred and fifty acres, in certain discreet and proper persons as trustees of said town: and I do authorise and empower my said atttorney to dispose of and sell the lots in said town at whatever credit he may think proper: and I do further authorise and empower my said attorney to convey two acres for the public square of said town, to the trustees of said town, or to any other persons my said attorney may think proper—but to be for the use of said town: and generally, I authorise and empower

my said attorney to do and transact all and any kind of business which may be necessary for the purpose of carrying into effect the foregoing powers:—hereby ratifying, allowing, and confirming all and whatsoever my said attorney shall do in the premises by virtue of these presents; and one or more attorneys under him to appoint for the purposes aforesaid, and again at pleasure to revoke.

In testimony whereof, I have hereunto set my hand and seal, this eighth day of March, in the year of our Lord one thousand eight hundred and two.

ISAAC BOWMAN, [SEAL.]

Signed and delivered in presence of.

VIRGINIA, *to wit:*

At a court continued and held for the county of Shenandoah, on Tuesday, the ninth day of March, eighteen hundred and two, this power of attorney, from Isaac Bowman to John Gwathney, was acknowledged by the said Isaac Bowman in open court, and ordered to be certified to the court of Clark county, in the Illinois grant.

In testimony whereof, I, Philip Williams, clerk of said county court of Shenandoah, have hereunto set my hand, and affixed the seal of my said county, this fifteenth day of March, in the year of our Lord one thousand eight hundred and two, and in the twenty-sixth year of the Commonwealth.

[SEAL.]

P. WILLIAMS, *C. S. C.*

I, John Douthitt, Recorder of the County of Clark, in the State of Indiana, do hereby certify, that the above and foregoing instrument of writing, and the certificate annexed thereto, are truly copied from the records now in my office.

In witness whereof, I have hereunto set my hand and seal, (having no seal of office,) this twelfth day of October, eighteen hundred and thirty-nine.

JOHN DOUTHITT, *R. C. C.* [SEAL.]

constitute and appoint John Gwathney his attorney in fact, with power and authority to lay off a town on the lower part of said tract number one (1); to begin at the lower part on the Ohio river, and to contain about one hundred and fifty acres, in the manner deemed most proper by the said John Gwathney; to convey two acres thereof for the public square of said town, for the general use of the town; to sell the lots in the town; and to convey the land laid off for the town to discreet and proper persons as trustees, with power to transact all and any kind of business necessary for the purpose of

carrying into effect the object and intention of said Bowman; with power to said John Gwathney to appoint one or more attorneys under him: all which more fully and at large appears by said letter of attorney (B.) In pursuance of said letter of attorney, the said John Gwathney did proceed to lay out and mark by metes and abuttals, one hundred and fifty acres of land, on tract number one (1), from the lower corner of the said Isaac Bowman, on the Ohio river, running up the river, and out from the same, for the quantity, and divide into lots for sale, and into streets, and laid off two acres for a public square, reserving blocks of land and spaces not divided into lots for building nor for sale; running the lots and naming the streets, and designating the public square and a certain portion of the Ohio river as a common: a map and plan of said town as laid out, he caused to be duly recorded; a copy of which original plan as duly certified from the record of the office of the county of Clark aforesaid, is herewith exhibited, marked (C), to wit:

Having so laid out the town and made the map and plat thereof, the said John Gwathney, as the attorney in fact for the said Bowman, his principal, and in his name did thereafter make and execute to the persons selected as trustees, Marston Green Clark, William Goodwin, Richard Pile, Davis Floyd, and Samuel Gwathney, gentlemen, then of the county of Clark, in the Territory, now State of Indiana, an indenture, reciting his power of attorney, and the laying out of said town; and did, by said indenture, declare the uses and trusts annexed to the said conveyance, of the one hundred and fifty acres so laid off into the town called and named Jeffersonville; and especially did declare, in behalf of said Isaac Bowman, that he should "have, and retain, and possess, and exercise the sole and entire and exclusive right and privilege of making application of the moneys arising from the sale of the lots of said town." And, also, declaring in behalf of said Isaac Bowman, that whatever right he then had and held as proprietor, to the establishment of one or more ferries, should belong to him, and be held to his use. The said one hundred and fifty acres, by the metes and bounds in the said deed described, to be held by said

trustees and their successors in office, and as trustees of said town, subject to the uses and trusts, so expressed, and so growing out of the objects and purposes and terms of said indenture, as will more fully and at large appear by a copy of said deed, bearing date on the second day of June, in the year eighteen hundred and two, duly certified from the record thereof from the office of the Recorder of the County of Clark, and herewith exhibited, marked (D.,) and which is as follows, to wit:

This indenture, made this twenty-third day of June, in the year of our Lord one thousand eight hundred and two, between Isaac Bowman, of the County of Shenandoah, in the Commonwealth of Virginia, by John Gwathney, of the County of Jefferson, and State of Kentucky, his attorney in fact, of the one part, and Marston Green Clark, William Goodwin, Richard Pile, Davis Floyd, and Samuel Gwathney, gentlemen, of the County of Clark, and Indiana Territory, of the other part:—*Whereas*, the said Isaac Bowman, by his certain power of attorney, bearing date the eighth day of March last, did authorise the said John Gwathney to lay off into a town the quantity of one hundred and fifty acres of land, being part of the tract granted by the Board of Commissioners to the said Bowman, and situate in the Illinois Grant, designated and known in the plan of said grant by the number one (1), and to begin on the lower part of the said tract on the Ohio River. And the said Isaac Bowman did further, in and by the said power of attorney, authorise the said John Gwathney to transfer and vest all the right, title and interest which he had in the said one hundred and fifty acres, in certain discreet and proper persons as trustees of said town, and to dispose of and sell the lots therein, at whatever credit he might think proper; and to convey to the trustees two acres of ground in said town for a public square. And whereas, the said John Gwathney, in virtue of the power delegated to him as aforesaid, hath laid *of* the said one hundred and fifty acres of land into a town, and hath made a plan thereof, with convenient lots, streets and commons, and called the name thereof Jeffersonville, and appointed the before mentioned persons, to wit, Marston Green Clark, William Goodwin, Richard Pile, Davis Floyd, and Samuel Gwathney, trustees thereof. Now, this indenture witnesseth, that the said Gwathney, as attorney in fact for the said Isaac Bowman, for and in consideration of the premises, and of the sum of five shillings, to him in hand paid by the said trustees, hath granted, transferred and conveyed, and by these presents doth grant, transfer and convey unto the said Marston Green Clark, William Goodwin, Richard Pile, Davis Floyd, and Samuel Gwathney, as trustees of the town of Jeffersonville aforesaid, and to their successors in office, the one hundred and fifty acres of land aforesaid, to the use, interest, and purposes hereinafter expressed, and to and for no other use, interest or purpose whatever, that is to say, the said John Gwathney, as attorney in fact for the said Isaac Bowman, shall

have, retain, possess and exercise the sole, entire, and exclusive right and privilege of making application of the money arrising from the sale of lots of the said town; and shall also have, and use, for and in behalf of the said Isaac Bowman, whatever right he may now hold as proprietor to the establishment of one or more ferries. The said one hundred and fifty acres of land are bounded as follows, to wit: beginning at (D.), a stake on the bank of the Ohio river, running thence up the river, and binding thereon north seventy-seven degrees, east seventy-five poles, to a stake on the bank; thence north forty-eight degrees, east one hundred and fifty-two poles, to a small locust; thence from the river north thirty-seven and one-half degrees west, one hundred and twelve and one-quarter poles, to a stake at the north-east corner; thence at right angles south fifty-two and one-half degrees west, one hundred and seventy-four poles to the north-west corner; thence south thirteen degrees east ——— poles, to the beginning. The said two acres of ground hereby granted to and vested in said trustees, and their successors in office, as a public square, adjoins lots number seventy-six and eighty-eight on the west side, and lots eighty-nine and seventy-seven on the east side; lots one hundred and four and one hundred and five and one hundred and six, on the north, and Market street on the south, with the appurtenances. *To have and to hold* the before mentioned tract or parcel of land, under the conditions, limitations, reservations and restrictions before mentioned, and the public square aforesaid, for the purposes aforesaid, to the said trustees and their successors in office, forever; and the said John Gwathney, as attorney in fact for the said Isaac Bowman, doth hereby grant, covenant and agree, for and in behalf of the said Isaac Bowman, and his heirs, &c., forever, to and with the trustees before named, and their successors in office, that all the estate, interest, claim, right and title, property and demand which he, the said Isaac Bowman, now hath in and to the land aforesaid, is hereby granted to and vested in the said trustees and their successors in office, under the reservations aforesaid, and for the purposes aforesaid; and that he and they shall and will warrant and forever defend the same, against the claim and demand of all manner of persons claiming in, through, for, from, by, or under him, them, or any of them.

In testimony whereof, the said Isaac Bowman, by the said John Gwathney, his attorney in fact, hath hereto set his hand and affixed his seal the day and year first before written.

ISAAC BOWMAN, [L. S.]
By his attorney in fact, J. GWATHNEY.

Signed, sealed and delivered in presence of.

INDIANA TERRITORY, CLARK COUNTY, *to wit:*

This day John Gwathney, as attorney in fact for Isaac Bowman,

came personally before James N. Wood, Esqr., one of the Justices of the Peace for said county, and acknowledged the foregoing indenture to be his act and deed.

Given under my hand and seal this seventh day of July, eighteen hundred and two.

JAMES N. WOOD, [L. S.]

I, John Dowthitt, recorder for the County of Clark and State of Indiana, do hereby certify, that the foregoing instrument in writing from Isaac Bowman to the trustees of Jeffersonville, is truly copied from the records now in my office.

In witness whereof, I have hereunto set my hand and seal (having no seal of office,) this twenty-second day of August, eighteen hundred and thirty-nine.

JOHN DOWTHITT, *R. C. C.* [L. S.]

Upon the back of which exhibit, D, is the following certificate, to wit:

"I, John Dowthitt, recorder for the County of Clark, in the State of Indiana, certify that the within and foregoing instrument of writing came into office, and was entered in the entry book, and recorded the seventeenth day of July, eighteen hundred and two.

I do certify that the above is truly copied from the entry book now in my office.

Given under my hand and seal, this eleventh day of March, eighteen hundred and forty.

JOHN DOUTHITT, [L. S.]
Recorder of Clark County."

In which deed the two acres laid off for the public square for the use of said town, in the power of attorney referred to, is shown by metes and bounds, and designated as such on the map and plan of the town, and the parts set apart as "common" is also marked on said map.

Your complainants further charge, that the persons named as trustees in said deed from said Bowman (by said John Gwathney as attorney in fact,) did accept of said trust and conveyance to them so made; that the small lots designated on the plan of the town, and numbered and designated for building lots, and for sale, were, for the most part, sold out under the superintendence of the said John Gwathney, and conveyed to the purchasers by proper deeds from the trustees; and that by and under the said plan and trust, many houses were erected in the said town, and it has grown up to be a populous town, and has been, about one or two years ago, made a city, incorporated by the Legislature of the State of Indiana, having a mayor and common council instead of trustees of the town.

They further represent to the court, that the five lots numbered

one hundred and ninety (190), one hundred and ninety-one (191), one hundred and ninety-two (192), sixteen (16), and twenty-three (23), on the plat and plan of the town designated by those numbers, were conveyed on the seventeenth day of July, eighteen hundred and two, and twelfth of August, eighteen hundred and two, to the said Isaac Bowman, by deeds of the said Marston G. Clark, William Goodwin, Richard Pile, Davis Floyd and Samuel Gwathney, the trustees aforesaid, which deeds of the seventeenth of July, eighteen hundred and two, and of the thirteenth of August, eighteen hundred and two, signed and sealed by the said trustees, were duly recorded in the office for records of Clark County, and then Territory, now State of Indiana. Certified copies whereof are herewith exhibited, marked E. and E. 2, and which are as follows, to wit:

This indenture, made this seventeenth day of July, in the year of our Lord one thousand eight hundred and two, between Marston G. Clark, William Goodwin, Richard Pile, Davis Floyd and Samuel Gwathney, gentlemen, trustees, of the town of Jeffersonville, in the County of Clark and Indiana Territory, of the one part, and Isaac Bowman, of the County of Shenandoah and Commonwealth of Virginia, of the other part: witnesseth, that the said trustees aforesaid, for and in consideration of the sum of one dollar, current money of the United States, have, and by these presents, do give, grant, bargain, sell, alien, release, convey and confirm unto the said Isaac Bowman, his heirs, executors, administrators and assigns, forever, two certain lots or parcels of land in the town aforesaid, known and designated on the plan of said town by numbers sixteen (16), and twenty-three (23), containing two hundred and one feet in length, and eighty-eight feet in width, with the appurtenances, unto the said Isaac Bowman, his heirs, executors, administrators and assigns, to his and their only and proper use, benefit and behoof for ever.

In testimony whereof, the said trustees have hereunto set their hands and affixed their seals, on the day and year first above written.

MARSTON G. CLARK,
WILLIAM GOODWIN,
RICHARD PILE,
DAVIS FLOYD,
SAMUEL GWATHNEY.

Signed, sealed and delivered in presence of.

INDIANA TERRITORY, CLARK COUNTY, *to wit:*

This day the within named Marston G. Clark, William Goodwin, Richard Pile, Davis Floyd, Samuel Gwathney, as trustees of the town of Jeffersonville, came personally before me, James N. Wood, Esq., one of the Justices of the Peace for said county, and ac-

knowledged the within indenture of bargain and sale to Isaac Bowman to be their act and deed.

Given under my hand and seal this thirteenth day of August, eighteen hundred and two.

JAMES N. WOOD, [L. S.]

I, John Douthitt, recorder in and for the County of Clark, in the State of Indiana, do hereby certify that the within and foregoing instrument of writing, and the certificate annexed thereto, are truly copied from the records now in my office.

In witness whereof, I have hereunto set my hand and seal (having no seal of office,) this twelfth day of October, eighteen hundred and thirty-nine.

JOHN DOUTHITT, *R. C. C.* [L. S.]

I, John Douthitt, recorder for the County of Clark, in the State of Indiana, do hereby certify, that it appears by the entry book in my office, that the within instrument of writing came into office August thirteenth, eighteen hundred and two, and was recorded.

Given under my hand and seal, (having no seal of office,) this the eleventh day of March, eighteen hundred and forty.

JOHN DOUTHITT, [L. S.]
Recorder of Clark County.

This indenture, made this twelfth day of August, in the year of our Lord one thousand eight hundred and two, between Marston G. Clarke, William Goodwin, Richard Pile, Davis Floyd, and Samuel Gwathney, gentlemen, trustees, of the town of Jeffersonville, in the county of Clark, and Indiana Territory, of the one part, and Isaac Bowman, of the county of Shenandoah, and Commonwealth of Virginia, of the other part, witnesseth:

That the said trustees aforesaid, for and in consideration of the sum of one dollar, current money of the United States, and at the request of John Gwathney, agent for said Bowman, have, and by these presents do give, grant, bargain, sell, alien, release, convey, and confirm unto the said Isaac Bowman, his heirs, executors, administrators, and assigns, forever, three certain lots or parcels of land in the town aforesaid, known and designated on the plan of said town, by numbers one hundred and ninety, (190,) one hundred and ninety-one, (191,) and one hundred and ninety-two, (192,) with their appurtenances, unto the said Isaac Bowman, his heirs, executors, administrators, and assigns, to his and their only proper use, benefit, and behoof, forever.

In testimony whereof, the said trustees have hereunto set their hands, and affixed their seals, on the day and year first above written.

MARSTON G. CLARK, [L. S.]
RICHARD PILE, [L. S.]
DAVIS FLOYD, [L. S.]
SAMUEL GWATHNEY. [L. S.]

Signed and sealed in presence of.

INDIANA TERRITORY,
Clark County, to wit:

This day, the within named trustees came personally before me, Abraham Huff, one of the justices of the Court of Common Pleas for said county, and acknowledged this indenture to be their act and deed.

Given under my hand and seal, October seventh, eighteen hundred and two.

ABRAHAM HUFF.

I, John Douthitt, recorder of the county of Clark, in the State of Indiana, do hereby certify, that the above and foregoing instrument of writing, from the trustees of Jeffersonville to Isaac Bowman, and the certificate annexed thereto, are truly copied from the records now in my office.

In witness whereof, I have hereunto set my hand and seal, (having no seal of office,) this twelfth day of October, eighteen hundred and thirty-nine.

JOHN DOUTHITT, [L. S.]
R. C. C.

I, John Douthitt, recorder for the county of Clark, in the State of Indiana, do hereby certify, that it appears by the entry book now in my office, that the within and foregoing instrument in writing came into office, and was recorded the ninth of October, eighteen hundred and two.

Given under my hand and seal, this eleventh day of March, eighteen hundred and forty.

JOHN DOUTHITT, [L. S.]
Recorder of Clark County.

And also, they make the certificate of J. Douthitt, the recorder, showing the times of the record of said deeds aforesaid, and marked E. 3, as a part of this bill, and which is as follows:

July seventeenth, eighteen hundred and two.

Came to the office, a deed from John Gwathney, as attorney in fact for Isaac Bowman, to Marston G. Clark, William Goodwin, Richard Pile, Davis Floyd, and Samuel Gwathney, as trustees for the town of Jeffersonville, for one hundred and fifty acres of land, in Clark county.

Trustees of Jeffersonville to Isaac Bowman, for lots number sixteen (16) and twenty-three, (23,) deposited in said recorder's office, August thirteenth, eighteen hundred and two.

Trustees to Isaac Bowman, for lots number one hundred and ninety, (190,) one hundred and ninety-one, (191,) one hundred and ninety-two, (192.)

Came into office for record, October ninth, eighteen hundred and two.

I, John Douthitt, recorder for the county of Clark, in the State of Indiana, do hereby certify, that the above and foregoing is a true copy from the entry book, where all writings that are to be recorded are entered the day that they come into office; and do further certify, that a certified copy of the deed has heretofore been furnished.

In witness whereof, I have hereto set my hand and seal, (having no seal of office,) this twenty-first day of February, eighteen hundred and forty.

JOHN DOUTHITT, [L. S.]
R. C. C.

There is no entry of the power of attorney, from Isaac Bowman to John Gwathney, on said book, but it is presumed that it was deposited in the office at the time the deed to the trustees was, as it is recorded immediately before the deed.

J. DOUTHITT.

They further state, from the dates of said deeds respectively, the said Isaac Bowman, in his lifetime, and your complainants, Isaac, George, Robert, Washington, Mary, and Rebecca, under the will of their father, the said Isaac, since his death, have had continued and uninterrupted possession, and seisure in fee, in severalty of the said five lots, number twenty-three, (23,) number sixteen, (16,) one hundred and ninety, (190,) one hundred and ninety-one, (191,) and one hundred and ninety-two, (192,) subject to the will and testament of their father.

That they have been equitably seised of the unsold parts of said town, particularly of the ground between First street, on the top of the bank, and the water of the river Ohio, from the lower corner of the town to the upper corner; and that the said original trustees of

the town, and their successors in office, ever since the date of the deed of twenty-third June, eighteen hundred and two, from the said Isaac Bowman, the grantor, to the trustees of Jeffersonville, have been seised and possessed continually, and uninterruptedly, of the said slip of land, from the street upon the top of the bank of the river to the water of said river, to the uses and trusts declared and necessarily resulting from the said deed from the said Isaac to the trustees of said town. That slip or space from the street on the top of the bank to the water, not numbered, but shown on the map and plan, never having been sold by said Isaac Bowman, the grantor, nor by the trustees of the town.

Your complainants further state, that the said Isaac Bowman, on the twentieth day of June, in the year eighteen hundred and twenty-four, did sign, seal, and publish, in the presence of three credible attesting and subscribing witnesses, his last will and testament, with codicil in due form of law, which, after the death of said testator, was first duly admitted to probate in the County Court of Shenandoah county, in the State of Virginia, where said testator was domiciled, and lived and died; the said County Court of Shenandoah having, by the laws of the State of Virginia, full cognizance and authority to take proof of said will and testament, and to grant letters of probate thereof, which probate and record of said will and codicil was then duly made on the thirteenth day of November, eighteen hundred and twenty-six; which said last will and testament hath also been since admitted to record in the county of Clark, State of Indiana. An authenticated copy of which last will and testament, and codicil, is herewith exhibited, marked (F,) and which is as follows:

In the name of God, amen! I, Isaac Bowman, of the county of Shenandoah, and State of Virginia, do make and ordain this instrument of writing to be my last will and testament.

First. It is my will and desire, that after my death my body shall be decently buried by my executors, hereafter named, and my funeral expenses and all my just debts fully paid and satisfied.

Second. I have heretofore given a valuable tract of land in the county of Shenandoah, to my oldest son, Philip, which I conveyed by deed to him as his full portion of real estate. I have also given and conveyed to my sons Abraham, Joseph, and John, valuable tracts of land in the State of Indiana, as their respective portions of my real estate. I have also heretofore given to my said several sons Philip, Abraham, Joseph, and John, sundry slaves and other articles of personal property with which they respectively stand charged, as their respective proportions of my slaves and personal estate, agreeably to my plan of the present division of my slaves and personal estate.

Third. I give and devise to my daughter Susannah, wife of William S. V. Richardson, now resident in the State of Ohio, a tract of

land containing five hundred acres, more or less, being lot number two hundred and thirty-two, lying and being in what is generally called the Illinois Military Grant, in the State of Indiana, to her, her heirs or assigns, as her full portion of my real estate. I have also heretofore given to my said daughter Susannah sundry slaves and other articles of personal estate, with which she stands charged, as her proportion of the present division of my personal estate.

Fourth. I give and devise to my daughter Eliza B., wife of Joseph M. Fontleroy, of the county of Frederick, a tract of land containing five hundred acres, more or less, in the said Illinois grant, in the State of Indiana, as her full proportion of my real estate. I moreover give and devise to my said daughter Eliza B. several slaves and other articles of personal property, with which she stands charged, as her proportion of the present division of my personal estate; all which I give and devise to her and her heirs and assigns forever.

Fifth. I give and devise to my beloved wife, Mary, the whole of the several tracts of land on which I now reside, part whereof lies in the county of Shenandoah, and the remainder in Frederick, including the tract I lately purchased, formerly owned by my son Philip, and on which he now resides, with the buildings and improvements thereon, and all the residue of my slaves and personal estate, subject, nevertheless, to the conditions hereinafter expressed and limited.

Sixth. It is my will and desire, that as my six younger children, Isaac, George, Washington, Robert, Mary, and Rebecca, respectively arrive at lawful age, my executors shall deliver to each of them as many of my slaves, in equitable lots, as can conveniently be made; which lots are to be taken from the families of the slaves, and their increase, of which I acquired possession by my intermarriage with my said wife Mary; and as much of my stock of horses and other articles of personal property as will make each one's proportion as nearly equal as can conveniently be done, to the distributions which I have heretofore made among my older children by my said wife Mary. And each division when so made shall be delivered to my said six younger children, and each one of them shall be charged with his or her respective part so devised; and when so divided, shall constitute their respective portions of my personal estate, except such further provisions as hereafter expressed.

Seventh. It is my will and desire that my widow shall maintain and educate my said six younger children *children*w ithout any charge to either of them for their expenses, maintenance and education. And I enjoin it as a solemn duty upon my said wife Mary, and my nephew, and friend George Brinker, to be particularly attentive to the decent maintenance of said six youngest children, until they respectively arrive at lawful age. But if either of said six children should depart this life before he, she, or they shall arrive at lawful age, or without lawful issue of their bodies,

in that event it is my will and desire that the proportion of the slaves to which he, she, or they would have been entitled, shall be equally divided among the surviving children of my said wife Mary, and their heirs and assigns.

Eighth. For the purpose of better enabling my executors to maintain and educate my six younger children, it is my will and desire that my estate should be kept together; and that the same shall be managed and conducted as if I were still living, until my youngest or surviving youngest child shall arrive at lawful age, except the event hereafter mentioned shall have taken place, and except such specific provisions hereinbefore and hereinafter expressed. I therefore expressly direct that no appraisement of my personal estate or slaves shall be made, nor no security be required of my executors until my youngest or surviving youngest child shall arrive at lawful age, unless my widow should marry; in that event an appraisement and division of my slaves and personal estate shall immediately be made among all my surviving children, according to the provisions hereinbefore expressed, and their heirs or assigns. As soon as my youngest or surviving youngest child shall arrive at lawful age, a general division and distribution of my slaves, with further increase, and personal estate, shall be made amongst all my children, and their heirs; subject, nevertheless, to the further provisions hereinafter made to my said wife Mary. And whereas I have heretofore given and divided between the children of *of* my first wife the slaves and their increase, of whom I acquired possession by intermarriage with my first wife, and it being just and reasonable that the children of my present wife, Mary, shall exclusively own the slaves and their increase, of whom I acquired possession by her; it is therefore my will and desire that the slaves and their increase, acquired by my said wife Mary, shall be exclusively divided among her several children, and their heirs or assigns, according to the provisions hereinbefore expressed; and the slaves and their increase, owned by me previous to my first marriage, or acquired by purchase at any time, shall be equally divided among all my children and their heirs, except as hereinafter excepted, which general division shall be made as hereinbefore directed.

Ninth. My several lots of land in the town of Jeffersonville, and State of Indiana, my ferry across the Ohio river, and my tract of land in the said Illinois grant, containing one hundred and fifty-six acres, more or less, being part of lot number thirty-two (32), in said grant, shall constitute one other division of real estate. My tract of land lying on the waters of Green river and Delaware creek in the State of Kentucky, containing fourteen hundred acres, more or less, shall constitute one other division of my real estate. And my several tracts of land whereon I now live and occupy, a part whereof lies in the county of Shenandoah and the remainder in Frederick,

shall constitute four other divisions of my real estate, which four divisions shall be made in the following manner:

The said several tracts contain altogether about eleven hundred acres, which shall be divided into four equal parts according to quantity and quality, and as nearly of a size as can justly be done. My brick dwelling house, with lands and improvements immediately adjacent thereto, shall constitute one division. My stone house, in which I formerly lived, with the lands and improvements thereto, shall constitute the second division. My merchant mill, and the lands and improvements adjacent thereto, shall constitute the third division. And my tract commonly called the Island Tract, shall constitute the fourth division. The said several four divisions to be so laid off and divided as to give each legatee as nearly an equal quantity of land as can be done, having due regard to quality and timber. And as there is no building on the Island Tract, I will and direct that the three legatees who shall receive the three improved divisions, shall each one pay to the one receiving the Island Tract, a sufficient sum to defray the expenses of erecting comfortable and convenient buildings thereon, which sum or sums of money to be paid by each legatee as aforesaid, to the one receiving the Island, shall be adjudged and awarded by the commissioners, who shall be appointed by the said court of Shenandoah County, for dividing and laying off the same.

If any two of my sons, when they arrive at lawful age, shall think proper to accept the lands in the State of Indiana, including my ferry across the Ohio at Jeffersonville, and the lots in the town of Jeffersonville, with the one hundred and fifty-six acre tract, and the fourteen hundred acre tract on the waters of Green river, in the State of Kentucky, as their full portion of my real estate, or if any of them shall accept the fourteen hundred acre tract on Green river aforesaid, then I give and devise the same to him and his heirs or assigns, forever. But if neither of my said youngest sons shall accept of either of the divisions of real property in the western country, then it is my will and desire, that the same, together with the four divisions of the land in the county of Shenandoah and Frederick, shall be divided by lot between my said six children, Isaac, George, Robert, Washington, Mary and Rebecca, and their heirs or assigns, forever. And if any of my sons shall accept of either of the divisions of my western lands, then the remainder of all my lands to be divided by lot between the other five, as before directed.

Tenth. I hereby request the county court of Shenandoah, to appoint as many discreet and disinterested men, as to them shall seem reasonable and proper, for dividing and allotting the lands aforesaid, agreeably to the foregoing provisions, and for awarding and deciding the amount to be paid in money to the one which will receive the Island Tract. And the division, allotment and award of such commissioners so appointed by the court, shall be final; which de-

cisions and allotments, with the award of the said commissioners, I give and devise to my said six children, Isaac, George, Robert, Washington, Mary and Rebecca, and their assigns, forever. But if either of my said six younger children shall depart this life before he, she, or they shall arrive at lawful age, then and in that event it is my will and desire, that the part of my real estate to which he, she, or they would have been entitled, shall be sold by my executors, and the money arising from the sale thereof, to be equally divided between all my surviving children, and their heirs or assigns.

Eleventh. I give and devise to my said wife, Mary, one third of my land in the counties of Shenandoah and Frederick, for and during her natural life, including my brick dwelling house and all the buildings and improvements attached thereto; her choice of five slaves, which choice is to be taken from the families of those slaves I acquired by her; also to be held during her natural life, and after her death, said slaves and their increase to be equally divided between her children and their heirs and assigns. I also give and devise to my said wife, Mary, her choice of three head of horses, six milch cows, two feather beds, bedstead and furniture, my riding gig and harness, and one third part of all the residue of my personal estate, the slaves excepted, to her exclusive use and benefit, and to her heirs or assigns. But if any part of the same shall remain at the time of her death, the same shall be sold by my surviving executors, and the money arising therefrom equally divided between all my children and their heirs or assigns.

Twelfth. If the money due me at the time of my death, shall be insufficient to discharge my just debts, my executors are hereby authorised and required to sell as much of my personal estate, the slaves excepted, as will be sufficient to discharge all my just debts, and to sell and dispose of all surplus crops and stock of all kinds, from time to time, for the more convenient and comfortable maintenance of the family and education of my children.

Thirteenth. When my youngest child, or surviving youngest child, shall arrive at lawful age, or at the marriage of my widow, should that event take place, an appraisement of all my slaves and personal estate, shall be made, and the same be divided among the children in the manner before directed. And for the more convenient distribution thereof, all my personal estate, the slaves excepted, shall be sold by my executors, except such part as I have herein before especially bequeathed.

Fourteenth. The slaves and other personal estate to which my son Philip would have been entitled, I give and bequeath to his several children, as well those now in existence as those which may hereafter be born, to be delivered and paid to them as they respectively arrive at lawful age, or when the general division of my estate shall take place, and not before.

And, lastly, I do hereby appoint my said wife, Mary, my nephew

and friend, George Brinker, my four sons, Isaac, George, Robert, and Washington, executors of this my last will and testament, any one or more of my said sons to be permitted to qualify as they arrive at lawful age.

In testimony whereof, I have signed, sealed, published, pronounced and declared this instrument of writing to be my last will and testament, hereby revoking all other wills heretofore made, this the twentieth day of June, in the year of our Lord eighteen hundred and twenty-four.

ISAAC BOWMAN. [L. S.]

Signed, sealed, published, and declared to be his last will and testament, in presence of us:

SAMUEL KERCHEVAL,
RICHARD M. SYDNOR,
WILLIAM M. BAILY.

Codicil.

Whereas, I was appointed guardian for my four elder children, to wit, Philip, Abraham, Catharine and Susannah, in order to receive their respective portions of the legacy due their mother, or to them in right of their mother, who was one of the daughters of Philip Gatewood, deceased; and as I have heretofore delivered and paid to each of said four elder children, the slaves and all other property and money due them, in right of their said mother; I, therefore, expressly declare and direct the said Philip, Abraham, Catharine and Susannah, or all and every one claiming under, or from them, shall release and discharge my executors from all claim or demand whatever, for and on account of my guardianship aforesaid, before he, she, or they, shall be entitled to receive or demand any part of their respective legacies provided and devised in my foregoing last will and testament.

ISAAC BOWMAN. [L. S.]

Teste:
SAMUEL KERCHEVAL,
RICHARD M. SYDNOR,
WILLIAM M. BAILY.

At a court held for the county of Shenandoah, on Monday the thirteenth day of November, eighteen hundred and twenty-six, this last will and testament of Isaac Bowman, deceased, with the codicil thereto annexed, produced in the court and proven by the oath of Samuel Kercheval and William M. Baily witnesses thereto, and ordered to be recorded. And on motion of Mary Bowman and George Brinker and Isaac S. Bowman, those of the executors therein named, who made oath according to law, and entered into

bonds with security agreeably to the directions of said will, a certificate is granted them for obtaining probate thereof in due form.

Teste: P. WILLIAMS. *C. C. S. C.*

A true copy—Teste: P. WILLIAMS. *C. C. S. C.*

VIRGINIA, SHENANDOAH COUNTY, *to wit:*

Presiding Justice of the court, to all to whom these presents shall come, greeting:

Whereas, Isaac Bowman, late of the aforesaid county, deceased, departed this life, having first duly made and published his last will and testament in writing, and therein appointed Mary Bowman, George Brinker and Isaac S. Bowman, George Bowman, Robert Bowman and Washington Bowman his executors, as by a copy of said will hereto annexed will more fully appear; the same having at a court held for the said county, on Monday the thirteenth day of November, eighteen hundred and twenty-six, been duly proved and admitted to record; and the said Mary Bowman, George Brinker and Isaac S. Bowman having performed what the law requireth, and thereby obtained a certificate for obtaining probate thereof in due form:

Therefore, we do by these presents give and grant unto the said Mary Bowman, George Brinker and Isaac S. Bowman, a probate of the said will in due form, with full power to perform and execute the said will according to law, and to collect, levy and receive all the goods and chattles, rights and credits of the said decedent, which in his lifetime, and at the time of his death, did of right to him belong and appertain. And we do further order and direct, that you, having first made and exhibited unto our said county court before the justices thereof, a true and perfect inventory of all and singular the goods and chattles, the rights and credits, do pay and discharge the debts of the decedent, and perform all the duties wherein the decedent stood bound at the time of his death. And further, that you do well and truly pay and satisfy the legacies in the said will contained, as far as the lands and tenements, goods and chattles, rights and credits, will thereto extend according to the value thereof, and according to law. And, that you do hereafter exhibit a true and faithful account of your actings and doings therein, when thereunto legally required by the said county court.

Given under my hand and seal, this thirtieth day of May, eighteen hundred and thirty-nine.

D. SETICKLY. [L. S.]

VIRGINIA, SHENANDOAH COUNTY, *to wit:*

I, Philip Williams, clerk of the county court of Shenandoah, certify that David Stickly is the presiding justice of the peace, duly

commissioned and qualified, and that full faith and credit are due to his official acts.

In testimony whereof, I have set my hand and affixed the seal of said court, at the court house, this thirtieth day of [L. S.] May, eighteen hundred and thirty-nine, and in the sixty-third year of the Commonwealth.

P. WILLIAMS, *C. C. S. C.*

SHENANDOAH COUNTY, *ss:*

I, David Stickly, presiding justice of said county court, do hereby certify, that Philip Williams is the clerk of said court, and that his certificate above is in due form.

Given under my hand and seal, this tenth day of June, eighteen hundred and thirty-nine.

D. STICKLY. [L. S.]

Came into office, and was duly recorded the eleventh day of March, eighteen hundred and forty, in book F, 2nd volume, pages one hundred and ninety-five (195,) one hundred and ninety-six (196,) one hundred and ninety-seven (197,) one hundred and ninety-eight (198,) one hundred and ninety-nine (199,) two hundred (200,) and two hundred and one (201,) numbers thirty (30,) thirty-three (33.)

JOHN DOUTHITT, *R. C. C.*

STATE OF INDIANA, *Clark County.*

I, Henry Harrod, clerk of the probate court, in the county of Clark, and State aforesaid, do hereby certify, that a certified copy of the last will and testament of Isaac Bowman, deceased, of Shenandoah county in Virginia, was presented to me in my office, on the twelfth day of August, eighteen hundred and thirty-nine, and that the same, together with the certificates thereon, was duly recorded in my office aforesaid.

Given under my hand, and the seal of our said court, [L. S.] this tenth day of March, A. D. eighteen hundred and forty.

Teste: HENRY HARROD, *Clk.*

By said last will and testament, the testator (amongst other things) by the ninth article of his will, made and signified six divisions of certain real estate, to him belonging, his several lots in Jeffersonville, in the State of Indiana; his ferry across the Ohio river, and his tract of land in said Illinois Grant, containing one hundred and fifty-six acres, part of number thirty-two, in the map and plan of the said division of the said grant, constituting one of the divisions his tract of land of fourteen hundred acres in the

State of Kentucky, on the waters of Green river and Delaware creek, to constitute one other division; and his several tracts of land, part in the County of Shenandoah, and part in the County of Frederick, in the State of Virginia, constitute four other divisions; to be divided into four parts, as directed in the will. Having so made and appointed the said six divisions of real estate, the testator proceeded to will and bequeath as follows: If any two of my sons, when they arrive at lawful age, shall think proper to accept the lands in the State of Indiana, including my ferry across the Ohio river, at Jeffersonville, and the lots in the town of Jeffersonville, with one hundred and fifty acres, and the fourteen hundred acre tract on the waters of Green river, in the State of Kentucky, as their full portion of my real estate, or if any one of them shall accept the fourteen hundred acre tract, on the waters of Green river as aforesaid, then I give and devise the same to him, his heirs and assigns forever; and if any one of them shall accept the lots in Jeffersonville, the ferry and the one hundred and fifty acre tract in Indiana, then I give and devise the same to him, and his heirs and assigns forever. But if neither of my said younger sons shall accept of either of said divisions of real property in the western country, then it is my will and desire that the same, together with the four divisions of the lands in the counties of Shenandoah and Frederick, shall be divided by lot, between my said six children, Isaac, George, Robert, Washington, Mary and Rebecca, and their heirs and assigns forever; and if any one of my sons shall accept of either of the divisions of my western land, then the remainder of all my lands to be divided by lot between the other five as before directed.

Your complainants state that the division consisting of the tract in Kentucky, on the waters of Green river, although equal in the estimation of the testator, to the other five divisions respectively, turned out, by reason of conflicting claims derived from the State to that land, and from other causes, to be of very little value; very far inferior to those other divisions, so that, if that division had by lot fallen singly to any one of said six devisees, so designated by the testator, such child would by such mischance have been almost, if not entirely, cut off and deprived of the intended equality by the testator's contemplated division between his said six children; and the minority of all the said six children at the death of the testator, and the continued and existing minority of the said daughters, Mary and Rebecca aforesaid, prevented the allotment in severalty of the said six divisions as aforesaid, ordained and directed by the testator; but the said four sons having arrived at full age, two of the said sons, Isaac and George, with the assent of the said other two sons, Robert and Washington, did elect under the provisions of the said will, to accept for the full shares of them the said Isaac and George, conjointly, the said two divisions of the lands, lots, and ferry [in Indiana and Kentucky, and having so elected, they

did by deed of the eleventh of May, eighteen hundred and thirty-nine, mutually signed by said Isaac, George, Robert and Washington, bargain, sell, and assign, unto Albert T. Burnly, the said two divisions of the lots in Jeffersonville, the ferry, the tract of one hundred and fifty acres, and the land in Kentucky, on Green river, at the price of twenty thousand dollars, as by the deed of said four sons to the said Burnly, herewith exhibited marked (G.) more at large appears, and which is as follows, to wit:

This indenture, made on this eleventh day of May, in the year eighteen hundred and thirty-nine, between Isaac S. Bowman and George W. S. Bowman, of the County of Shenandoah, and State of Virginia, of the first part; Robert C. Bowman and Washington M. Bowman, of the same county, and State of Virginia, of the second part; and Albert T. Burnly, of the city of Louisville, and the State of Kentucky, of the third part; witnesseth, that the said Isaac S., George W. S., Robert C. and Washington M., the parties of the first and second parts, are four sons of Isaac Bowman deceased, who was one of the Illinois regiment, under the command of General James Rogers Clark, and as such, was entitled to his due proportion of the grant by the State of Virginia, to the Illinois regiment, which grant was located and laid off on the Ohio river at the Falls, in the now State of Indiana. And the said Isaac Bowman, now deceased, was entitled to a certain lot of land in the said Illinois Grant, designated and known in the map and plan of dividing out said grant, by number one, which was conveyed to said Isaac Bowman in his life time, by the commissioners appointed under the laws of Virginia, which tract lies on the Ohio river, at the upper end of the rapids of the Ohio, whereof the said Isaac did, in his life time, by his agent and attorney in fact, John Gwathney, cause one hundred and fifty acres part of said tract number one, to be laid off into a town, with convenient streets, lots and commons, and called the name thereof, Jeffersonville.

And said Isaac Bowman, by his said attorney in fact, John Gwathney, did cause a map and plan of said town, with the lots, streets and commons, to be prepared; and thereafter the said Isaac Bowman, by his said attorney in fact, John Gwathney, did make a deed of conveyance for the one hundred and fifty acres of land, so laid off into a town, to Marston Green Clark, William Goodwin, Richard Pile, Davis Floyd and Samuel Gwathney, as trustees of the said town of Jeffersonville, and to their successors in office, to the use, interest and purposes in said deed expressed, and to and for no other use, interest or purpose whatever, as in said deed expressed; which deed bears date on the twenty-third day of June, in the year eighteen hundred and two, and is recorded as of the seventeenth of July, eighteen hundred and two, upon the acknowledgement of said Isaac, by his attorney in fact, John Gwathney, in the Indiana Territory, Clark County, in which deed said Isaac Bowman's right to have, retain, possess, and exercise the sole, entire

and exclusive right and privilege of making application of the moneys arising from the sale of lots of the said town; and also, that said Isaac shall have and use whatever right he did then hold as proprietor to the establishment of one or more ferries, as therein expressly reserved and declared, and retained in favor of said Isaac Bowman, as by said deed recorded as aforesaid, will more fully and at large appear; and the said Isaac was likewise entitled in his life time, to another tract of land in said Illinois Grant, containing one hundred and fifty-six acres, more or less, being part of lot number thirty-two, in said grant; and also was entitled to a tract of land in the State of Kentucky, of fourteen hundred acres, more or less, on the waters of Geen river and Delaware creek.

And the said Isaac Bowman in his lifetime did make and publish his last will and testament, in writing, bearing date on the twentieth day of June, eighteen hundred and twenty-four, which after his death was duly admitted to probate and record, on the thirteenth day of November, eighteen hundred and twenty-six, in the county of Shenandoah, in the State of Virginia: wherein and whereby the said Isaac, the testator, did amongst other things will, declare, and devise, that his several lots of land, in the town of Jeffersonville, in the State of Indiana, his ferry across the Ohio river, his tract of land in the said Illinois grant, of one hundred and fifty-six acres, more or less, part of lot number thirty-two, in said grant, should constitute one division of his real estate; that his tract of land of fourteen hundred acres, more or less, lying on the waters of Green river and Delaware creek, in the State of Kentucky, should constitute one other division of his real estate; and that the tract of land on which said testator lived, to be divided into four other parts, should constitute four other divisions of his real estate, as by said testament duly proved and recorded, as aforesaid, more fully and at large appears. And in and by said will and testament the said testator did will and devise, amongst other things, that if any two of his sons (meaning his sons, Isaac S., George W. S., Robert C. and Washington M.), when they arrived at age, should think proper to accept of the Indiana property, and the Kentucky property, as their full proportion of their real estate, then the said testator did bequeath the said Indiana property and the said Kentucky property to the said two sons so electing and accepting, and their heirs and assigns forever, with further provisions therein, for the separate election of said four sons as to the said two divisions, designated by the property in Indiana and the property in Kentucky: And that if no two of said sons conjointly would elect, jointly to accept of the two western divisions in Indiana and Kentucky, nor either singly would accept either of the said two western divisions, then the said testator did will and devise, that the said two western divisions in Indiana and Kentucky, and the said four other divisions in the counties of Shenandoah and Frederick, in Virginia, should be assigned by lot;

one of said divisions to each of the said four sons above named, as parties of the first and second parts to this indenture, and his two daughters, Mary and Rebecca; and it is in said testament further provided, willed and devised by said testator, that if by reason of the non-election, and non-acceptance of any of the sons to take the said western divisions in Indiana or in Kentucky, or of either of said divisions, as satisfaction of their or his part of the real estate, according to the testament whereby the assignment by lot should become necessary, that then and in such case the said assignment by lot should not be made until the youngest of the said six children, between whom the said allotment became necessary, should come of age of twenty-one years; all of which more fully and at large appears in said testament. And the said four sons, Isaac S., George W. S., Robert C. and Washington M., having each arrived at lawful age, and the youngest child, Rebecca, not having yet arrived at full age of twenty-one years; but the said Isaac S., and the said George W. S., the party of the first part, conjointly have elected to accept the said two western divisions of the testator's property in Indiana and Kentucky, as their full portion of the real estate of the testator, in accordance with his will, testament and bequest, and the said persons of the second part have severally and collectively assented to the said election, and acceptance by the said Isaac S. and George W. S., the parties of the first part, to take and have, together, the said two divisions in Indiana and in Kentucky, as the full portion of the said testator's real estate to the said Isaac S. and George W. S., bequeathed and intended by their said father. Now, therefore, this indenture further witnesseth, that for and in consideration of the premises, and for and in consideration of the sum of twenty thousand dollars, lawful money of the United States, paid by the said Albert T. Burnly, party of the third part, unto the said Isaac S. and George W. S., parties of the first part, at and before the ensealing and delivery of these presents, which payment by the said party of the third part, and receipt by the parties of the first part, is hereby acknowledged, they the said Isaac S. and George W. S., the parties of the first part, have given, granted, bargained, and sold, alienated, assigned, and set over, and by these presents do give, grant, bargain and sell, alien, assign, and set over unto the said party of the third part, and to his heirs, executors, administrators and assigns in fee simple, all the estate, right, title and interest in law and equity, of which the said testator, Isaac Bowman, at the time of his death, was seised, possessed or entitled to, in the said tract of land in the Illinois grant, known on the map of said grant, and designated by number one; and especially all lots of land in the town of Jeffersonville, to which said Bowman, the testator, had right, title and claim at the time of his death, and all of said testator's rights, and interest in the unsold lots, in the streets, in the commons, in the suburbs, and ferries, and franchises and freehold, and uses and

trusts in the said town of Jeffersonville not sold nor conveyed by the said Bowman, his attorney in fact, John Gwathney, before recited; together with all and singular the uses and trusts, rights, ferries and franchises, reserved upon the face of said deed, to the use of the said Isaac Bowman, now deceased, on which he might lawfully claim, or have, by virtue of his title, before the deed to the said trustees, as not conveyed and claimed by said deed to said trustees. Also the residue of said tract of one hundred and fifty-six acres, remaining to said testator out of said lot number thirty-two (32) in the said Illinois grant. Also the tract of land of fourteen hundred acres on the waters of Green river and Delaware creek, in the State of Kentucky, comprehending all and every estate, right, title, interest, ferries, franchises, easements, lots, commons, appendages and appurtenances, uses and trusts, in law and in equity, which they the said Isaac S. and George W. S. may lawfully have claim; bargain, sell, assign, and transfer under the will of said Isaac Bowman, deceased, and of the election and acceptance so made by said Isaac S. and George W. S., to take and accept the said two divisions of the testator's estate in Indiana and Kentucky, under said will, in full of their shares of the real estate of their said father and testator, as aforesaid.

And the said Isaac S. Bowman, and the said George W. S. Bowman, two of the sons of the said Isaac Bowman, deceased, who are of full age of twenty-one years, respectively, have elected and accepted, and by these presents do, on their part, publicly and solemnly elect and declare, their acceptance of the said two divisions of the property in Indiana and Kentucky, in full of their shares in the real estate of the testator, in and under the said testament. And the said Isaac S. and George W. S., the parties of the first part, do hereby, for themselves and their heirs, release unto the parties of the second part, and to their two sisters, Mary and Rebecca, all and every claim to the other four divisions of said testator's real estate, as by the said testament is provided, required and devised. And the parties of the second part, heretofore named, for themselves, and their heirs, executors, and administrators, and assigns, for and in consideration of said election, acceptance and release, by said Isaac S. and George W. S., do hereby and herein assent to ratify and confirm the said election and acceptance of the divisions of the property in Indiana and Kentucky, so as aforesaid specified and made known, by the parties of the first part.

And they, the said parties of the second part, for themselves, their heirs, executors, administrators and assigns, do jointly and severally confirm and release unto the said party of the third part, all the right, title and interest, in law or equity, which they, the said party of the second part, or either of them, might lawfully claim in and to said property in Indiana and in Kentucky aforesaid, under and by virtue of the will and testament of the said Isaac Bowman, deceased, for and in consideration of the benefits accrued

to the party of the second part, by the election and acceptance so made by the party of the first part; and for the further consideration of one dollar, to each of the parties of the second part, in hand paid, by the party of the third part, at and before the ensealing and delivery of these presents; to have and to hold the aforesaid bargained and sold lands, lots, ferries, commons and premises, with all rights, ways, ferries, commons, privileges, easements, franchises, uses, trusts, appendages, and appurtenances to the said property, and each and every parcel thereof, lying in Indiana and Kentucky aforesaid, belonging, appertaining and appending, unto the said party of the third part, and to his heirs, executors, administrators and assigns, in fee simple, in as full, ample and complete use, right, possession and enjoyment, as he, the said Isaac Bowman, the testator, at the time of his death, held, possessed, claimed, or enjoyed, or had legal or equitable right to possess, enjoy, hold or use, in and to any, or all, and each and every part, parcel or division thereof.

And the said parties of the first part, for themselves, and their heirs, executors and administrators, do jointly and severally covenant and agree, with the party of the third part, his heirs, executors and administrators, that they, the said parties of the first part, and their heirs, executors and administrators, respectively, the aforesaid bargained and sold premises, and every part and parcel thereof, against the said parties of the first part, and their heirs, and against all other person or persons claiming or to claim by, through, or under the said Isaac Bowman, deceased, shall and will for ever warrant and defend, unto the said party of the third part, and his heirs and assigns.

And the said party of the second part, for themselves and their heirs, do covenant and agree with the party of the third part, and his heirs, executors, administrators and assigns, that they, the said party of the second part, and their heirs, executors and administrators, respectively, the aforementioned bargained and sold premises, and every part and parcel thereof, against themselves and their heirs, executors and administrators, but not against any others, shall and will warrant and defend for ever, unto the said party of the third part, his heirs, executors, administrators and assigns.

In testimony of the foregoing, the parties have set their hands and seals, on the day and year aforesaid first herein written, as the date of this indenture.

ISAAC S. BOWMAN, [L. S.]
GEORGE W. S. BOWMAN, [L. S.]
ROBERT C. BOWMAN, [L. S.]
WASHINGTON M. BOWMAN. [L. S.]

Signed, sealed, acknowledged and delivered,
in presence of three witnesses:
GEORGE BRINKER,
BENJAMIN K. SPRINGLER,
PHILIP STICKLY.

COMMONWEALTH OF VIRGINIA,

County of Shenandoah, to wit:

I, David Stickly, a Justice of the Peace of the County Court of Shenandoah, in the State of Virginia, lawfully commissioned, sworn, and acting as such, do certify, that on the eleventh day of May, in the year eighteen hundred and thirty-nine, the parties, Isaac S. Bowman, George W. S. Bowman, Robert C. Bowman, and Washington M. Bowman, residing in said county, and named in said deed, came before me, in said county, and acknowledged the foregoing deed, severally, to be their act and deed, respectively, for the purposes therein named.

Given under my hand, as Justice of the court aforesaid, on the day, and year, and place above stated.

D. STICKLY, *J. P.* [L. S.]

COMMONWEALTH OF VIRGINIA,

County of Shenandoah, sct.

I, Philip Williams, Clerk of the County Court of Shenandoah, in the State of Virginia, do certify, that David Stickly, who has signed and certified the foregoing acknowledgment of the deed, as made before him, was, and is, an acting Justice of said County Court.

[L. S.] In testimony whereof, I have hereunto signed my name and affixed the seal of said court, on this, the thirteenth day of May, in the year eighteen hundred and thirty-nine.

P. WILLIAMS, *C. C. S. C.*

COMMONWEALTH OF VIRGINIA,

Shenandoah County, sct.

Personally appeared before me, the undersigned, in and for said county, Isaac S. Bowman, George W. S. Bowman, Robert C. Bowman, and Washington M. Bowman, and acknowledged to have signed, sealed, and delivered the within and above instrument of writing, on the day and year therein mentioned, and for the purposes therein named, this eleventh day of May, eighteen hundred and thirty-nine.

D. STICKLY, *J. P.* [L. S.]

COMMONWEALTH OF VIRGINIA,

Shenandoah County, sct.

I, Philip Williams, Clerk of the County Court of said county and State, do hereby certify, that David Stickly, whose signature appears to the within certificate, is, and was at the time of signing

the same, a Justice of the Peace in and for said county, duly appointed and commissioned, and that all his acts and deeds, as such magistrate, are, and ought to be, entitled to full faith and credit.

Given under my hand and seal of office, this thir-
[L. S.] teenth day of May, eighteen hundred and thirty-nine.

P. WILLIAMS, *C. C. S. C.*

Your complainants state, that by the electing and transfer to said Burnly at the price aforesaid, the said shares of said Isaac and George, in the real estate of the testator, are made equivalent to any two of the other four remaining divisions, and the said stumbling-block and lottery, by reason of the diminutive value, consisting of the tract on Green river, is removed, greatly to the advantage, certainly, and security of the four other legatees, Robert, Washington, Mary and Rebecca. Your complainants would further state, that by the aforementioned assignments and conveyance to said Isaac Bowman, by the commissioners appointed to apportion the said one hundred and fifty thousand acres amongst the officers and soldiers of the Illinois Regiment, of the said tract number one, which was bounded on the south-east by the Ohio river, he the said Isaac, the grantee, was permanently seised, possessed, and entitled to the said land and to the Reparian property, including the slope, margin or bed of the river, for all the purposes, privileges, appurtenances, appendages, easements, profits and emoluments, as well corporeal as incorporeal, hereditaments annexed and appurtenant to said Reparian property, as far as by the laws of nations, the common law and municipal law, property could be holden and acquired in the margin, bed, and water of navigable streams, for the easements and facilities of commerce, and especially that the right to make wharves, quays, docks, &c., and to have and use ferries and fisheries, and such like, not detrimental to navigation or commerce, but in advancement thereof, does belong and adhere to the title and estate, in the lands aforesaid, bordering on and bounded by the river Ohio. And as to the rights, claims and demands of your complainants, in and to any lots, lands, blocks, or slips of land, or square in the said town of Jeffersonville, and in the said one hundred and fifty-six acres, except as hereinafter are particularly mentioned, your orators and oratrices waive, for the present, to call the said trustees, or their successors in office, or the said corporation, to account for the same, but not abandoning or relinquishing the said rights, claims and demands to other parts of said lots, lands, blocks, and slips of land; more especially, your complainants are advised, that by the laws of Virginia, at the time applicable to the said one hundred and fifty thousand acres so assigned to the officers and soldiers of the Illinois Regiment, and so especially noticed in the cession to the United States, as

well as by the ordinance by the Congress of the United States for the government of the Territory north-west of the Ohio river, acquired by the deed of cession from the State of Virginia to the United States, by the common law operating within said Territory, connected with the grant of the State of Virginia to the Illinois Regiment aforesaid, the deed of cession to the United States, with the reservation therein in favor of the Illinois Regiment, and the apportionment and assignment of *of* parcel number one as aforesaid, to the said Isaac Bowman, the title of said Isaac to said tract of land number one, so bounded on the south-east by the Ohio river, did include and carry along as part of his estate and interest in the said land, the right, title and interest and privilege to a ferry or ferries from his said land; that the right of ferries belonged, by the laws of Virginia and by the laws of Indiana, to the owners of the soil, landing, and bank of the stream. Furthermore, your orators are advised, that by the said ordinances of the Congress of the United States for the government of the Territory north-west of the Ohio river, obligatory within the Territory of Indiana during the territorial government thereof, and by the Constitution of the State of Indiana when admitted into the Union as a State, and also by the Constitution of the United States, the private rights and interests of the said Isaac Bowman, and his heirs, devisees and assigns, in the said land and town of Jeffersonville, and rights of ferry thereunto appertaining and belonging as aforesaid, were and are secured to him, the said Isaac, his devisees and assigns. They are advised, also, that by the express terms of the deed aforesaid, from said Bowman to the trustees aforesaid of Jeffersonville, and their successors, and by the legal and equitable effects of said deed, the rights of ferry, so alluded to in the said deed, as appertinent to the property in the land therein described and conveyed to the said trustees, was, and is held by the said trustees, and their successors, in trust, and to the use of the said grantor, Isaac Bowman, and his heirs, devisees, and assigns. So that whilst the legal title of the land, and the incorporeal hereditaments issuing out of and adhering to the soil and Riparian property, is in the trustees of the town of Jeffersonville, the equitable right and use and interest in the right of ferry was, and is in the said grantor, Isaac Bowman, and his heirs and assigns, forever, and was, and is held in trust accordingly, by the trustees of the town of Jeffersonville; and that use and trust being so created expressly by deed, duly enrolled and recorded according to law, that all the inhabitants of the town of Jeffersonville, and all persons claiming from or under the trustees, and all other persons, were bound to take notice of the said uses and trusts declared in the said deed to the trustees, and are affected with notice in law of the said uses and trusts. Your complainants state, that at, and from, and after the date of said deed to the trustees, the said Isaac Bowman was residing, and continually domiciled and abiding in

the State of Virginia, in the county of Shenandoah, until his death, and continually absent from the Territory and State of Indiana; and that at the time of the death of the said Isaac, his devisees, the children of said Isaac aforesaid, were resident in the State of Virginia, in the county of Shenandoah; were all infants, under twenty-one years of age; and the two females, your complainants, yet are infants; and that the said children and devisees were continually absent from the State of Indiana, until one of the complainants, in the year eighteen hundred and thirty-nine, for the first time, came into the State for a short time, and then returned to the State of Virginia. But now, so it is, be it made known to this honorable court, that, whilst the said trustees of Jeffersonville were so invested with the legal title, and holding subject to the uses and trusts growing out of the said deed of conveyance from said Isaac Bowman, by his attorney in fact, John Gwathney, and continued and uninterruptedly possessed of all the unsold lots, slips, streets, blocks of lots, and public square, and commons of said town of Jeffersonville, one of the said trustees, Marston G. Clark, as the complainants are informed, and perhaps some other of the trustees, in succession to the former trustees, did keep a ferry across the Ohio river, from Jeffersonville aforesaid, having no right, title nor interest in the bank of the river, the slope, landing, or ferry, other than as a trustee as aforesaid of the town.

And your orators are advised that the act of the said Marston G. Clark, one of the trustees, and the act or acts of any of the other trustees, in so undertaking to use and conduct ferriage from the said bank and town of Jeffersonville across the Ohio river, if not actually intended for the benefit of the said Isaac Bowman and his heirs and assigns, yet did in equity accrue to the benefit of said cestui que trust, according to the terms and effect of the deed so made by said Isaac to the trustees of Jeffersonville, and their acceptance of said trust. And the complainants charge and allege Athanasius Wathen, residing in the town of Jeffersonville, and for many years one of the trustees of the town of Jeffersonville, and now one of the councilmen of said city, who is a citizen of the State of Indiana, prayed to be made a defendant to this bill, by some collusion and contrivance of Marston G. Clark and with Joseph Bowman, a trustee, but now deceased, and John M. Strader, John Shalcross and James Thompson, who are not residents of the State of Indiana, but of the State of Kentucky, and by reason of their non-residence of the State of Indiana cannot be made parties to this bill, and contriving and confederating with the s'd Athanasius Wathen and said Marston G. Clark and common council of Jeffersonville, and pretending to have some title to said ferry, and with the present acting trustees of Jeffersonville, or some of them, by combining with others unknown to your complainants, pretends to have purchased out said Marston Green Clark's right of ferriage, or said Joseph Bowman's right of ferriage which he exercised whilst he was one

of the trustees of the said town of Jeffersonville, and under color of that, or some other pretence, wholly unfounded, illegal and void, to your complainants unknown, is using and exercising the ferry from Jeffersonville across the Ohio river, by steam boats, to the great interruption, hinderance, molestation and damage of your complainants; and claims to exclude your orators forever. And the present Mayor and Councilmen of the city of Jeffersonville, namely, Isaac Herskill, Mayor, and Athanasius Wathen, James G. Read, Nathaniel Field, John D. Shryer, James Slyder, Levi B. Hall, Daniel Trotter, James B. M. Holland, Charles W. M'Gill and Samuel Merriweather, Councilmen, all citizens of the State of Indiana, regularly elected by the inhabitants of Jeffersonville under the laws of Indiana, for regulating said town, or claiming so to be and acting as such, and who your complainants alledge and charge are substituted as trustees, and clothed with all the trust & favor of s'd Isaac Bowman, with which the original trustees of said town were invested, and are, to all intents & purposes, successors of said trustees, and who are prayed in their corporate capacity, and as trustees as aforesaid, to be made defendants to this bill, have done nothing, and refuse to do anything to restrain and prohibit, or to aid your complainants in assertion and security of their rights of ferry, although bound by their trust to protect the rights of said Bowman, his heirs, devisees and assigns. The complainants alledge and charge, that neither the said Marston Green Clark, nor the said Wathen, nor any one under, or from whom he pretends to claim, nor the said other defendants, the Mayor and Council of Jeffersonville, nor any other person whatever, have, or ever had, so far as these complainants are informed, know and believe, any title, interest or estate, in law or equity, to any part of the land and space between the top of the bank and the water of the river Ohio, or in the slope or margin of the bank, or in the edge or bed of the river Ohio, within the said one hundred and fifty acres, whereon the town of Jeffersonville is laid off, whereon to found any just or lawf. claim to the right of ferry in opposition to the right of your orators, other than that interest and estate growing out of the deed as aforesaid from said Isaac Bowman, by his attorney in fact, to the trustees of the said town, containing on the face thereof the declaration of uses and trusts aforementioned; and especially your complainants charge and aver, that neither *that neither* the said Isaac, in his life time, nor the said devisees of the said Isaac Bowman, ever have made sale, conveyance or assignment of the said land between the top of the bank and the river Ohio, or of any part thereof, or of the right of ferry, either to the defendants aforesaid, or to either of them, or to said Marston Green Clark, or to any other persons, save only such as appears, on the face of the deed of the said Bowman to the trustees of Jeffersonville, and on the face of his will and testament, and on the face of the deed from four of the complainants to their co-complainant, Albert, before exhibited and marked (D. F. & G.;) so that your complainants do alledge, aver and charge, that if said

Wathen has any claim to any permanent right to ferriage, in opposition to that of said Isaac Bowman, his heirs and assigns, such claim must be founded on a fraudulent combination, and breach of trust, with full notice of the right of said Isaac Bowman and his heirs and devisees, and wholly void, illegal and covinous, and in fraud of the law; and especially they aver, alledge and charge, that any color, or pretence, or licence or authority to use the ferry aforesaid, on the part of defendant, Wathen, is by mere sufferance, temporary and in subordination to the superior right and equity of your complainants, and which the said Wathen is bound in law to surrender to the demand of your orators. Your complainants charge, that the right of ferry aforesaid, from Jeffersonville aforesaid, across the water of the Ohio, is very valuable—that the yearly rent is of the value of six thousand dollars or upwards—that the yearly issues and profits are worth not less than ten or twelve thousand dollars, after paying all costs and charges, and expenses of boats, and attendants for ferriage, and transportation from Jeffersonville—that the said defendant, for several years past, has used the said ferry, and has annually, during that time, received very large sums for ferriage, amounting each and every year to a sum not less than fifteen thousand dollars, in the gross amount.

And they especially aver and charge that your orators, or one of them, have repeatedly asked, demanded and requested of said defendant, Wathen, to desist from ferrying from Jeffersonville, and from the slips and landing within the said town, to yield up the ferry to your orators, and to cease his claim, molestation and interruption, and interference with the rights of the devisees of the said Isaac Bowman, and the assignee, Albert T. Burnly; and particularly, he was often so requested in the year eighteen hundred and thirty-nine, and again in the year eighteen hundred and forty, and again, very recently, before the exhibition of this bill, and then and there, in Jeffersonville, in or about the eleventh of February, your complainant, Albert, made the request, the said Wathen being then well apprised of the authority of the said Albert, and of the assignment to him by the deed aforementioned and exhibited and marked (G.,) and the said Albert then and there proposed to take the steam ferry boats of said Wathen, and to pay him the cost thereof; and the demand and request has been since that time repeated with the like proposal to pay the costs of the ferry boats, and to take them, if the said Wathen would make known the costs of said boats. But the said defendant, Wathen, refused and yet refuses to desist; refused to state the costs or value of the ferry boats; refused to deliver them over; refused to surrender his pretended claim to the superior and just right of your orators, or of either of them; but under various pretences, evasions and excuses, obstinately persists in ferrying passengers, waggons, teams, horses, &c., &c., for money, from Jeffersonville aforesaid across the Ohio river, using for that purpose, and usurping and molesting the right

of ferry of your complainants, and declares his determination to persist and continue his disturbance, hinderance and molestation, and is unwilling to account to your orators, or any of them, for any rents and profits, or pay any thing for them by way of discount in setting the value of the ferry boats and machinery; and refuses to deliver over the ferry boats to your complainants; but seems resolutely bent upon taking the rents, issues and profits of the said ferry hereafter, without accounting to your orators as he has heretofore done in years past—all of which actings and doings of said defendant Wathen, and the mayor and council of the city of Jeffersonville, are against equity and good conscience, and tend manifestly to the injury of your orators, and especially tend to break up the sale so made to said Albert T. Burnly, to render your complainants, Isaac and George, liable upon their warranty to said Burnly, to prevent them from receiving the purchase money yet to become due and payable, and in the end to prejudice the whole of the complainants, by reviving the lottery and hazzard growing out of the very diminutive value of the Kentucky tract of land, on Green river, constituting one of the divisions to be assigned by lot.

In tender consideration whereof, and for as much as your complainants are without adequate remedy at law, especially as they are advised that they are but cestui-que trusts of the right of ferry, the legal title to the Riparian property and land being in the trustees of the town of Jeffersonville, but are properly to be relieved in equity, wherein equitable rights are properly cognizable and to be enforced, and accounts decreed, and rents and profits taken, had and *and* received, and withheld from cestui-que trusts by the trustees themselves, or by those having notice of the trusts and uses, &c., &c.

To the end, therefore, that the said defendant, Wathen, in his individual character, and as a councilman, and the said mayor and council of Jeffersonville, may answer unto all and singular, the premises, as fully as if repeated by interrogatories, that the said Wathen may discover what claim he has to the said ferry; that the said Wathen may answer and say if he has not been requested to desist from ferrying from Jeffersonville as aforesaid; did he not refuse to do so? Did he not refuse to state the value of his steam ferry boats? To deliver them to the complainant, Albert? And to accept payment therefor? Was not the proposal made to pay for said ferry boats? Did he not refuse to accept payment therefor, or to yield up and desist from his use and claim of ferriage, and declare his intention to persist and continue in total denial of any right to the complainants, or any, or either of them? That said Wathen may render an account of the rents, issues and profits by him received heretofore; and be decreed to pay therefor such sums as to the court shall seem equitable and just; that said Wathen may be decreed to account also for the accruing rents; that the account of the rents, issues and profits be

taken and decreed upon such equitable principles as shall save harmless the said Wathen from any loss, because of the costs and charges in building, preparing, or procuring the ferry boats—your orators hereby submit to take the same at such value as shall to the court seem just, and to pay therefor such sum as may be found justly due to the said Wathen, if any thing shall be due, or upon such other equitable principles as the court shall direct and order. And to the end that the said Wathen may give security in such penalty as the court shall direct, with condition to account for and pay the accruing rents, issues and profits, or such part thereof as the court shall think proper to decree; and, on failure of said Wathen to give such security, your complainants pray that they may be permitted to use and enjoy the ferry 'pendente liti,' upon giving approved security in such penalty as the court shall direct, conditioned to account for and pay the said rents and profits to such person and in such manner as the court shall order, direct and decree, which security the complainants hereby offer to give.

And, to the end that the said Wathen may be enjoined and prohibited from impeding, interfering with, molesting, hindering or disturbing your orators in the said right of ferry from Jeffersonville across the Ohio, and from using their said landing and ferry any longer, that the complainants be quieted in their said right of ferry, landing and soil.

And, to the end that the complainants may have such general, full, and adequate relief in the premises as the circumstances of their case shall require, and the principles of equity shall dictate, the complainants submit and offer to abide such terms as to taking the ferry boats at such value, and to pay therefor in such manner as the court shall deem meet and proper, and to do such equity on their part as in conscience they are bound unto. They pray for the process of subpœna against the said Athanasius Wathen, in his individual character, and the said other defendants, Isaac Haskill, Athanasius Wathen, James G. Read, Nathaniel Field, John D. Shryer, James S. Slyder, Levi B. Hall, Daniel Trotter, James B. M. Holland, Charles W. McGill, and Samuel Merriweather, mayor and council of the town of Jeffersonville, all of whom are citizens in the State of Indiana, directed, &c., commanding, &c.

And they pray, that the defendant, Wathen, be enjoined from ferrying, unless he will give security as aforementioned; and in case of his failure to give security, that the said complainants be permitted to ferry, upon giving security in such penalty, and with such condition as the court shall direct.

And finally, they pray for general relief of this bill; and as in duty bound, they will ever pray.

BROWN,
Counsel for Comp.

STATE OF KENTUCKY, *Jefferson County, sct.*

Albert T. Burnley, this day made oath, that the statements contained in the foregoing bill, as far as they are stated of his own knowledge, are true; and so far as stated from the information of others, he believes them to be true.

A. T. BURNLY.

Subscribed and sworn to, before me, this second day of March, eighteen hundred and forty.

LEWIS MADISON, *J. P. I. C.*

Mr. Anathasius Wathen,—You will please to take notice, that I shall, at the May session of the Circuit Court of the United States, for the District of Indiana, in eighteen hundred and forty, move the honorable court for an order, requiring you to give bond and security to account for the rents of the ferry now used by you, from Jeffersonville across the Ohio river, and on your failure to do so, that you be enjoined and restrained from using said ferry, and that the same be permitted to be used by me, by my giving security to account for rents of said ferry, as the court may order.

A. T. BURNLY.

Jeffersonville, 12 March, 1840.

I, as trustee of the town of Jeffersonville, and in my individual capacity, do acknowledge the service of the above notice this day, and a copy of the foregoing bill.

Given under my hand, this twelfth day of March, eighteen hundred and forty.

A. WATHEN.

Whereupon, the said complainants, by Brown, their solicitor, sued out of the office of the clerk of said court, the United States writ of subpœna, in the words and figures following, to wit:

The President of the United States of America, to the Marshal of the District of Indiana, greeting:

You are hereby commanded to summon Athanasius Wathen, in his individual character, and the said Athanasius Wathen, Isaac Haskill, James G. Read, Nathaniel Field, John D. Shryer, James Slyder, Levi B. Hall, Daniel Trotter, James B. M. Holland, Charles W. McGill and Samuel Merriweather, styling themselves mayor and common council of Jeffersonville, in the State of Indiana, if they may be found in your district, to be and appear before the Judges of the Circuit Court of the United States of America, for the seventh circuit, and district of Indiana, on the first day of the next term thereof, to be holden at Indianapolis, in said district, on

the third Monday in May next, to answer the bill of complaint exhibited in said court against them, by Isaac S. Bowman, and George W. S. Bowman, Robert C. Bowman, Washinghton M. Bowman, Brinker, and Mary, his wife, formerly Mary Bowman, and Rebecca Bowman, all citizens of the State of Virginia; the said Mary and Rebecca, infants under the age of twenty-one years, by George W. S. Bowman and Isaac S. Bowman, their brothers and next friends, and Albert T. Burnly, a citizen of the State of Kentucky; or in default thereof, the matters and things in said bill contained will be taken as confessed, and a decree entered accordingly.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States of America, and the seal of said Circuit Court, hereunto affixed, at Indianapolis, this twenty-first day of March, eighteen hundred and forty.

[L. S.]

HORACE BASSETT, *Clerk.*

Which said subpœna was then and there delivered to Jesse D. Bright, United States Marshal, for the District of Indiana aforesaid, and was by him afterwards duly returned into the clerk's office of said court, endorsed as follows, to wit:—Executed on all the within named defendants, except James G. Read and Daniel Trotter, who are not found.

JESSE D. BRIGHT, *U. S. M. D. Ind.*

April the seventh, eighteen hundred and forty.

Be it remembered, also, that afterwards, to wit, on the twenty-fifth day of July, eighteen hundred and forty, there was issued out of the clerk's office of said court, the United States writ of subpœna, in the words and figures following, to wit:

The President of the United States of America to the Marshal of the District of Indiana, greeting:

You are hereby commanded to summon James G. Read and Daniel Trotter, if they may be found in your district, to be and appear before the judges of the Circuit Court of the United States of America, for the seventh circuit and District of Indiana, on the first day of the next term thereof, to be holden at Indianapolis, in said district, on the third Monday of November next, to answer the bill of complaint exhibited in said court against Athanasius Wathen, in his individual character, and the said Athanasius Wathen, Isaac Haskill, James G. Reed, Nathaniel Field, John D. Shryer, James Slyder, Levi B. Hall, Daniel Trotter, James B. M. Holland, Charles W. McGill, and Samuel Merriweather, styling themselves Mayor and Common Council of Jeffersonville, by Isaac S. Bowman, George W. Bowman, Robert C. Bowman, Washington M. Bow-

man, Brinker, and Mary, his wife, formerly Mary Bowman, and Rebecca Bowman, all citizens of the State of Virginia; the said Mary and Rebecca infants, under the age of twenty-one years, by George W. S. Bowman and Isaac S. Bowman, their brothers and next friends, and Albert T. Burnly, a citizen of the State of Kentucky; or in default thereof, the matters and things in the said bill contained will be taken as confessed, and a decree entered accordingly.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of [L. S.] said court, at Indianapolis, this twenty-fifth day of July, eighteen hundred and forty.

HORACE BASSETT, *Clerk.*

Which said subpœna was then and there delivered to Jesse D. Bright, United States Marshal for the district aforesaid, and was by him afterwards duly returned to the clerk's office aforesaid, endorsed as follows, to wit:

"On the 31st July, 1840, I executed the within writ, on the within named James G. Reed and *Saml.* Trotter, by reading the same to them.

JESSE D. BRIGHT,
U. S. M. D. Ia."

Be it further remembered, that afterwards, to wit, at a Circuit Court of the United States, begun and holden at Indianapolis, within and for the circuit and district aforesaid, before the Honorable John McLean, one of the Associate Judges of the Supreme Court of the United States, and the Honorable Jesse L. Holman, District Judge, as aforesaid, on Monday, the eighteenth day of May, in the year of our Lord one thousand eight hundred and forty, come the complainants, by Brown & Sweetser, their solicitors; and the defendant, Wathen, by Stephen C. Stevens, Esquire, his attorney, comes also; and the defendants Athanasius Wathen, Isaac Haskill, James G. Read, Nathaniel Fields, John D. Shryer, James Slyder, Levi B. Hall, Daniel Trotter, James B. M. Holland, Charles W. McGill, and Samuel Merriweather, Mayor and Common Council of the town of Jeffersonville, by Stephen C. Stevens, Esquire, their attorney, come also, and file their warrant of attorney, properly executed and certified, under the authority and direction of said Mayor and Common Council, by the clerk thereof, in the words and figures following, to wit:

At a meeting of the Mayor and Common Council of the town of Jeffersonville, held May the ninth, eighteen hundred and forty, the following preamble and resolutions were *past:*

Whereas, Isaac S. Bowman, George W. Bowman, Robert C.

Bowman, Washington M. Bowman, Brinker, and Mary Brinker, his wife, Rebecca Bowman, and Albert T. Burnly, have filed a bill in chancery, in the Circuit Court of the United States, against Athanasius Wathen and the present Mayor and Common Council of the town of Jeffersonville; and whereas, it is among other things charged, that the Mayor and Common Council of the town of Jeffersonville are the successors in office of Marston Green Clark, William Goodwin, Richard Pile, Davis Floyd, and Samuel Gwathney, trustees, made by the agent and attorney in fact of one Isaac Bowman, to wit, John Gwathney, by deed bearing date the second day of June, eighteen hundred and two; and that the Mayor and Common Council of said town of Jeffersonville stand seised in trust of the same rights, privileges, and immunities of said original trustees, and have to perform the same duties, and are liable to the same liabilities; and more particularly, that they, said complainants, as heirs of said Isaac Bowman, are the legal and equitable owners of the commons of the said town of Jeffersonville, and of all the unsold lands, the banks, slopes, and margin of the Ohio river, and aquatic and ferry rights, and all the rights of *Riparian* proprietors, and that the Mayor and Common Council of the town of Jeffersonville are seised in fee of all these things for their use; also, said Mayor and Common Council of the town of Jeffersonville are charged with the neglect of duty, and with fraud and collusion: Therefore, be it

Resolved, That all the above statements and charges are believed by the Mayor and Common Council to be contrary to truth, equity, and good conscience, and that the same ought to be defended; and for the purpose of making a proper defence, we do hereby nominate, constitute, and appoint Stephen C. Stevens our attorney at law and in fact, to appear in said Circuit Court for us, and enter our appearance as defendants to said bill of complaint, and plead, answer, or demur thereto; and in all things act for us, and in our place and stead, and make all manner of legal defence or defences that in his judgment may from time to time be proper and correct.

I, Benjamin F. Clark, clerk of the Common Council of the town of Jeffersonville, do hereby certify, that the foregoing preamble and resolution is a true and perfect copy of the original, which was *past* at a meeting of the said Mayor and Common Council, held May the ninth, eighteen hundred and forty.

In testimony whereof, I, the said Benjamin F. Clark, do set my hand and seal, as said clerk.

BENJAMIN F. CLARK, [L. S.]
C. C. T. J.

And thereupon, said Stephen C. Stevens enters his appearance

as attorney for said Mayor and Common Council of the town of Jeffersonville aforesaid.

And afterwards, to wit, on the day and year aforesaid, and at the term aforesaid, comes into open court, Athanasius Wathen, one of the defendants aforesaid, and makes his affidavit in the words following, to wit:

"And now, on this day, the said defendant, Athanasius Wathen, comes into open court, and being duly sworn, upon his oath saith, that the obligor, to wit, Samuel H. Patterson, who is security for costs for the complainants in this behalf, is, as deponent is informed and certainly and verily believes, one of the true and equitable and perhaps legal owner, of a great portion, if not all, of the matters in controversy in this suit, and that the suit is prosecuted in whole, or in part, for his benefit; that deponent is informed and believes that said Burnly, who claims to own the matters in controversy, is a mere nominal complainant, merely for jurisdiction and convenience, and that the said Patterson is directly interested in the event of the suit.

Sworn to in open court, May the 18, 1840.

H. BASSETT, *Clerk.*"

And thereupon, by his said attorney, moves the court to grant a rule upon said complainants to shew cause, if any they can shew, on or before the next calling of this cause, why the said suit in this behalf shall not be dismissed for the want of security for cost; which motion the court overrule, and day is given, &c.

And afterwards, to wit, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and forty, at the circuit and district aforesaid, being the sixth judicial day of the term aforesaid, before the judges aforesaid, came the parties by their attorneys aforesaid, and this cause is continued until the next term of this court.

And be it further remembered, that afterwards, to wit, at a circuit court of the United States, begun and holden at Indianapolis, within and for the circuit and district aforesaid, before the honorable Jesse L. Holman, Judge as aforesaid, on Monday, the sixteenth day of November, in the year of our Lord one thousand eight hundred and forty, and being the first Judicial day of said term of said court, came the parties by their attorneys aforesaid, and the defendant, Wathen, files his separate answer to the complainant's bill of complaint herein, which answer is as follows, to wit:

"The separate answer of Athanasius Wathen, of the town of Jeffersonville, county of Clark, and State of Indiana, to the bill in chancery of Isaac S. Bowman, George W. Bowman, Robert C.

Bowman, —— Brinker, and Mary Brinker, his wife, Rebecca Bowman, and Albert T. Burnly, filed against him, the said Athanasius Wathen, and others, in the Circuit Court of the United States at Indianapolis:

This respondent, now and at all times hereafter, saving and reserving to himself all and all manner of exception and exceptions to the manifold uncertainties, insufficiencies, errors, misunderstandings, illegalities and untruths in said bill contained, for answer thereunto, or unto so much thereof as he is advised that he is bound to make answer unto, he answering, saith: that as to so much of said bill as avers that said Isaac Bowman, deceased, was an officer in Clark's Illinois regiment, and that he, said Isaac Bowman, deceased, was, as such officer, with said Clark, and assisted said Clark in the reduction of the posts of Kaskaskia and St. Vincent, and that he, the said Isaac, received as a reward for his aforesaid services, the lot of land number one (1) in said Clark's grant, in the aforesaid county of Clark, on which the said town of Jeffersonville stands, and that he, the said Isaac Bowman, for said lot of land number one, (1) received a legal, proper, and sufficient deed of conveyance for the same, in manner and form as stated in said bill of complaint, or in any other way, manner, or form whatsoever, he, this respondent, says, that of his own knowledge, he knows nothing, but he admits that he has heard such reports, and therefore admits them to be true.

That as to so much of said bill of complaint as avers that said Isaac Bowman appropriated one hundred and fifty acres of said lot number one, for said town of Jeffersonville, and to fully and finally carry his designs into full and complete operation in the shortest time successfully, he, the said Isaac, did make the said John Gwathney, his agent and attorney in fact, to lay off and sell said town of Jeffersonville, this respondent believes to be true, and therefore admits it.

And for the greater certainty, this respondent makes here a true and certified copy of the said deed of conveyance of the said Isaac Bowman, deceased, to said John Gwathney, constituting, nominating, and appointing him, the said John Gwathney, his agent and attorney in fact, and granting to him, the said John Gwathney, the aforesaid powers, a part of this his said answer, and for that purpose exhibits it marked with the letter (B), and which is in the words following, to wit:

To all to whom these presents shall come, *greeting:*

Know ye, that I, Isaac Bowman, of the county of Shenandoah and commonwealth of Virginia, for divers good causes and considerations me thereunto moving, have made, ordained, constituted and appointed, and by these presents do make, ordain, constitute

and appoint Mr. John Gwathney, of the county of Jefferson and commonwealth of Kentucky, my true and lawful attorney, for me and in my name, to lay off a town on a part of my tract of land situate in the Illinois grant, known in the plan of said grant by the number one (1), to begin at the lower part of said tract on the Ohio river, and to contain about one hundred and fifty acres of the said tract of land, which I do authorise and empower the said John Gwathney to lay off into a town, in any manner he may think most proper, and to vest all the right, title and interest which I have in the said one hundred and fifty acres, in certain discreet and proper persons, as trustees of said town. And generally, I authorise and empower my said attorney to do and transact all and any kind of business which may be necessary for the purpose of carrying into effect the foregoing powers, hereby ratifying, allowing and confirming all and whatsoever my said attorney shall do in the premises, by virtue of these premises; and one or more attorneys to appoint for the purposes aforesaid, and again at pleasure to revoke.

In testimony whereof, I have hereunto set my hand and seal, this eighth day of March, in the year of our Lord one thousand eight hundred and two.

ISAAC BOWMAN. [L. S.]

Signed, sealed, and delivered, in presence of.

VIRGINIA, *to wit*:

At a court, continued and held for the county of Shenandoah, on Tuesday, the ninth day of March, eighteen hundred and two, this power of attorney from Isaac Bowman to John Gwathney, was acknowledged by the said Isaac Bowman in open court, and ordered to be certified to the court of Clark County, in the Illinois Grant.

In testimony whereof, I, Philip Williams, clerk of the County Court of Shenandoah, have hereunto set my hand, and affixed the seal of my said county, this fifteenth day of March, in the year of our Lord one thousand eight hundred and two, and in the twenty-sixth year of the commonwealth.

[L. S.]

P. WILLIAMS, *C. S. C.*

I, John Douthitt, Recorder of the county of Clark, in the State of Indiana, do hereby certify, that the above and foregoing instrument of writing, and the certificate annexed thereto, are truly copied from the records now in my office.

In witness whereof, I have hereunto set my hand and seal (having no seal of office,) this twelfth day of October, eighteen hundred and thirty-nine.

[L. S.]

JOHN DOUTHITT, *R. C. C.*

And this respondent admits, that said John Gwathney had full power to lay off said town of Jeffersonville as he might think proper—that he had full power to convey said one hundred and fifty acres of land to trustees, to be by him selected as trustees of said town—and that he had full power to dispose and sell said lots of land, in said town, on such credits and terms as he pleased—that he had power to give two acres of land as a public square in said town—and that he had full power to appoint one or more attorneys under him, so far as the said Isaac Bowman was, and is concerned.

This respondent also admits, that said John Gwathney, under, and by virtue of said power, did lay off the said town of Jeffersonville, on said one hundred and fifty acres of land, and made a complete and full plan and plat of said town, and recorded the same on the records of the said county of Clark. By which said plan and plat, it fully, clearly and truly appears that said Gwathney did lay said town off, by running streets and alleys through it, dividing it into blocks and squares of ground; and by subdividing a part of said blocks and squares of ground, into lots of land for sale, with a block of two acres of land for a public square. And further, that the said Gwathney did lay out all the land between Water street of said town, and the Ohio river above Front street of said (town,) for a public common to said town, and did then and there dedicate the same to the public, for a common, upon the face of said plan and plat, by writing upon it these words, to wit: "Commons on the river Bank," and that the said Gwathney did sell the lots of said town to the purchasers of said lots of ground, with an express and public and notorious understanding by all parties, including said Gwathney, that all the land above "Front street," of said town, and between Water street and the river Ohio, was dedicated to said town and the public, as a public "Common."

And he, the said Gwathney, did also then and there have upon the said plan and plat of the said town, divers other blocks and pieces of ground, not upon the bank of the river, and which he did not divide into lots for sale, and which he did not sell, nor offer for sale, but left the same open for commons, as this respondent is informed and believes. And that it is true, that said Gwathney did name several of the streets of said town, but that it is not true that he named them all.

This respondent admits also, that it is true that said Gwathney, after he had so laid off, planned and platted said town, that he then selected five trustees, discreet and proper persons, to wit: Marston G. Clark, William Goodwin, Richard Pile, Davis Floyd, and Samuel Gwathney, to whom he conveyed, by a good and sufficient, legal and available deed of conveyance, for a valuable consideration, in fee simple, clear of all incumbrance, (except as in said deed of conveyance, and is shown and declared,) all the right, title, claim, interest, and demand of the said Isaac Bowman, deceased, of, in and to said one hundred and fifty acres of land, and its ap-

purtenances, easements and aquatic rights, and rights and privileges as *as* a Reparian proprietor, to them, the said Marston G. Clark William Goodwin, Richard Pile, Davis Floyd, and Samuel Gwathney, and their successors in office; by which said deed to them, the said trustees as aforesaid, made by said Gwathney to them, the said trustees, it clearly and truly appears, that said one hundred and fifty acres of land was, and is fully, absolutely, completely, and legally, in fee simple together with all the estate, right, title, interest, claim and demand of, in and to the same, and the privileges and appurtenances thereunto appertaining and belonging, and all easements, aquatic rights, and rights and privileges, as Reparian proprietors, and the rents, issues, and the profits thereof, were all and singularly conveyed to said trustees, and their successors in office forever; but not for the use of said Isaac Bowman, and his heirs and assigns, but for the sole and only use of the said town of Jeffersonville, and subject only to the declaration, incumbrances, and reservations following, to wit:

First. That said Gwathney shall retain, possess, and exercise the sole, entire, and exclusive right and privilege of making application of the money arising from the sale of lots of said town.

Secondly. That the said Isaac Bowman should have the right *he then had* as proprietor to the establishment of one or more ferries; and that these, and these only, are the conditions, reservations and incumbrances upon said conveyance, and that no other can result or arise by implication, because the said deed of conveyance so declares upon the face of it; and the said respondent makes here a true and certified copy of said deed of conveyance by John Gwathney to said trustees, and for that purpose exhibits it, marked with the letter (D.), and which is as follows, to wit:

This indenture, made this twenty-third day of June, in the year of our Lord one thousand eight hundred and two, between Isaac Bowman, of the county of Shenandoah, and the Commonwealth of Virginia, by John Gwathney, of the county of Jefferson, and State of Kentucky, his attorney in fact, of the one part, and Marston Green Clark, William Goodwin, Richard Pile, Davis Floyd, and Samuel Gwathney, gentlemen, of the county of Clark, and Indiana Territory, of the other part.

Whereas, the said Isaac Bowman, by his certain power of attorney, bearing date the eighth day March last, did authorise the said John Gwathney to lay off into a town the quantity of one hundred and fifty acres of land, part of the tract granted by the Board of Commissioners to the said Bowman, and situate in the Illinois Grant, and designated and known in the plan of the said grant by the number one (1), and to begin on the lower part of the said tract on the Ohio river; and the said Isaac Bowman did further, in and by the said power of attorney, authorise the said John Gwathney to transfer and vest all the right, title and interest which he had in the said one hundred and fifty acres, in certain discreet

and proper persons as trustees of said town, to dispose of and sell the lots therein at whatsoever credit he might think proper; and to convey to said trustees two acres of ground in said town for a public square.

And whereas the said John Gwathney, in virtue of the power deligated to him as aforesaid, hath laid *of* one hundred and fifty acres of land into a town, and hath made a plan thereof, with convenient lots, streets and commons, and called the name thereof Jeffersonville, and hath appointed the aforementioned trustees, to wit, Marston Green Clark, William Goodwin, Richard Pile, Davis Floyd, and Samuel Gwathney, trustees thereof. Now this indenture witnesseth, that the said John Gwathney, as attorney in fact for the said Isaac Bowman, for and in consideration of the premises, and of the sum of five shillings, to him in hand paid by the said trustees, hath granted, transferred and conveyed, and by these presents doth grant, transfer and convey, unto the said Marston Green Clark, William Goodwin, Richard Pile, Davis Floyd, and Samuel Gwathney, as trustees of the town of Jeffersonville aforesaid, and to their successors in office, the one hundred and fifty acres of land aforesaid, to the use, interest, and purposes hereinafter expressed, and to and for no other use, interest, or purpose whatever; that is to say, the said John Gwathney, as attorney in fact for the said Isaac Bowman, shall have, retain, possess, and exercise the sole, entire and exclusive right and privilege of making application of the moneys arising from the sale of the said lots of the said town; and shall, also, have and use, for and in behalf of the said Isaac Bowman, whatever right he may now hold as proprietor to the establishment of one or more ferries. The said one hundred and fifty acres of land are bounded as follows, to wit: beginning at (D.) a stake on the bank of the Ohio river, running thence up the river and binding thereon, north seventy-seven degrees, east seventy-five poles, to a stake on the bank; thence north forty-eight degrees, east one hundred and fifty-two poles, to a small locust; thence from the river north thirty-seven and a half degrees, west one hundred and twelve and one-quarter poles, to a stake at the north-east corner; thence at right angles south fifty-two and one-half degrees, west one hundred and seventy-four poles, to the north-west corner; thence south thirteen degrees east, —— poles, to the beginning. The said two acres of ground hereby granted to and vested in the said trustees, and their successors in office, as a public square, adjoins lots number seventy-six and eighty-eight, on the west side, and lots eighty-nine and *senty*-seven on the east; lots one hundred and four, one hundred and five, one hundred and six, on the north, and Market street on the south, with the appurtenances, to have and to hold the before mentioned tract or parcel of land, under the conditions, limitations, reservations and restrictions before mentioned; and the said public square aforesaid, for the purposes aforesaid, to the said trustees, and their successors in

office, forever. And the said John Gwathney, as attorney in fact for the said Isaac Bowman, doth hereby grant, covenant and agree, for and in behalf of the said Isaac Bowman, and his heirs, &c., forever, to and with the trustees before named, and their successors in office, that all the estate, interest, claim, right, title, property, and demand, which he, the said Bowman, now hath in and to the land aforesaid, is hereby granted to and vested in the trustees, and their successors in office, under the reservations aforesaid, and for the purposes aforesaid; and that he and they shall and will warrant and forever defend the same against the claim and demand of all manner of persons claiming, in, through, for, from, by, or under him, them, or any of them.

In testimony whereof, the said Isaac Bowman, by the said John Gwathney, his attorney in fact, hath hereto set his hand and affixed his seal, the day and year first before written.

ISAAC BOWMAN, [L. S.]
By his attorney in fact, J. GWATHNEY."

INDIANA TERRITORY, CLARK COUNTY, *to wit:*

This day, John Gwathney, as attorney in fact for Isaac Bowman, came personally before James N. Wood, Esq., one of the Justices of the Peace for said county, and acknowledged the foregoing indenture to be his act and deed.

Given under my hand and seal this seventeenth day of July, eighteen hundred and two.

JAMES N. WOOD. [L. S.]

STATE OF INDIANA, CLARK COUNTY, *to wit:*

I, John Carr, recorder of said county, do hereby certify that the within deed is a true copy of the record.

Given under my hand the second day of November, eighteen hundred and eighteen.

J. CARR, *R. C. C.*

If, then, it is true that the said Isaac Bowman was at the time of making said deed of power and trust to said John Gwathney, and at the time said Gwathney so conveyed as aforesaid to said trustees, the said one hundred and fifty acres of land, the true and lawful owner in fee simple of said one hundred and fifty acres of land unincumbered, the said one hundred and fifty acres of land, was, and is, vested in the said trustees and their successors in fee simple, clear of all incumbrance, together with all the privileges and appurtenances thereunto belonging, or in any wise appertaining, and all easements, and aquatic rights, and the rights and privileges of a Reparian proprietor (except as above stated,) for the use, and only use, benefit and behoof of the said town of Jeffersonville; and being so conveyed to said trustees for the use

of said town, the statute converts it into an absolute estate in the said town, subject, originally, to said two reservations—that is to say, first, that said agent, Gwathney, should make application of the money arising from the sale as aforesaid. And, secondly, that the said Isaac Bowman, *during his natural life*, should have the right of establishing one or more ferries, if he chose so to do.

This reserved right of establishing one or more ferries, had not any right in the soil upon the river to support it; and so it was understood by the said Isaac Bowman and his said agent, Gwathney. They understood that all and singular, all right, title, interest, claim and demand of said Isaac Bowman, was conveyed and vested in said trustees for the use of said town, and, therefore, the said right of establishing one or more ferries was reserved, but no soil was reserved—therefore, it is a mere life estate that is reserved. There are no words of perpetuity, or of inheritance used, and, therefore, it is a mere life estate. But this respondent is further advised that the reservation is a nullity upon its face as to any practical effect.

This respondent, further answering, saith, that he is advised and believes that the said power of attorney of said Isaac Bowman to said Gwathney, was, and is, of *itself a dedication* of the whole of said one hundred and fifty acres of land to the public, for said town, with all its appurtenances, easements and aquatic rights, and all the rights of a Reparian proprietor, and that the reservations made by the said agent, Gwathney, in his deed to said trustees, are made without authority, and are not available in law or equity; but if they are, they do not, in any way, injure, disturb, or infringe upon respondent's rights, interest, or claim.

And this respondent is also further advised and believes, that the conduct of said Isaac Bowman, and his said agent Gwathney, prove that they so understood the matter; that since the time of planning, platting and recording said town, thirty-eight years have rolled away, and for more than half that time said agent lived in sight of said town, and well knew all about it; and that for twenty-four years of said thirty-eight years, the said Isaac Bowman was living, and well knew all his rights, and did know, or might have well known, all that was doing in said town of Jeffersonville; and neither the said agent or said Isaac Bowman, or any person holding under them, or either of them, ever, in any way, paid any taxes to government, or to said town of Jeffersonville for any of said property, right or privilege; nor did they, or either of them, or any person under them, or either of them, ever, in any way, claim, or pretend to claim, any right, title, interest, claim, or demand, or interest, easement, or franchise, of, in, and to said one hundred and fifty acres of land, or any part thereof, or growing out of, or appurtenant to said one hundred and fifty acres of land, or any part thereof. Nor did they, or either of them, or any person holding or claiming under them, or either of them, ever claim, or

pretend to claim, any right or interest of, in, or to any ferry, wharf, dock, or quay, right, or privilege, growing out of any right, title, claim, or interest, of, in, and to said one hundred and fifty acres of land, or any part thereof. Nor did they, or either of them, or any person holding under them, or either of them, ever, in any way, claim any right, privilege, or easement as Reparian proprietor. Nor did they, or either of them, or any person holding under them, or either of them, ever claim, or pretend to claim, to be Reparian proprietors *adverse* to the claim of the public and the said town of Jeffersonville, until the filing of the bill of complaint in this behalf, or a few months before that time, say in the year eighteen hundred and thirty-nine.

This respondent further saith, that he is informed and believes, that the said town of Jeffersonville, and the people thereof, and the public, have been legally and peaceably, and actually in fact, in the actual use, occupation and possession of the said one hundred and fifty acres of land, and its banks, easements, aquatic rights, and Reparian rights and privileges, from the day of the date of said deed of said Gwathney to said trustees, say for thirty-eight years, last past, and still and so possessed (except so far as lots have been laid off and sold,) with the knowledge and concent of said Isaac Bowman and his said agent. And that the said Isaac Bowman and his said agent have not, nor hath either of them, been possessed of the land, or any part thereof, either directly or indirectly, except so much thereof as said trustees, by deed of conveyance, conveyed to the said Isaac Bowman by their deeds for that purpose for the whole term of the said thirty-eight years; nor are they now so possessed.

This respondent admits, that said trustees accepted the said deed of trust, and that the lots, or nearly all the lots, have been sold and conveyed to purchasers, and that said town of Jeffersonville is now a populous incorporated town, with a mayor and common council. This respondent also admits, that said exhibits of said complainants, marked E. E. 2, and E. 3, are correct and true, so far as he knows.

This respondent further answering, saith, that as to so much of said bill, as in substance states as follows, to wit, that the said trustees of said town, and their successors in office, have from the date of said agent's deed of conveyance to said trustees, to wit, from the twenty-third day of June, eighteen hundred and two, up to the present day, been continually and uninterruptedly seised and possessed of all the unsold parts of said town, and particularly of the land lying between Front street of said town, (this respondent supposes that complainants mean Water street,) and the river Ohio, from the lower corner to the upper corner of said town, to the uses and trusts declared and necessarily resulting from said Gwathney to said trustees. And that the said Isaac Bowman, and his heirs, have for the whole of said time been

equitably seised and possessed of the same in like manner; he, this respondent, is advised, that said trustees have been possessed, but not for the use of said Isaac Bowman, or his heirs or assigns. And further, he, this respondent, denies, that either said Bowman, or his heirs or assigns, have ever been possessed or seised, either in law or equity, since the date of said deed of said Gwathney to said trustees, of the same, or any part thereof, except those that are seised and possessed, under the said deed to said lots conveyed to them by said trustees; but that said possession and seisure have been and now are in said trustees and town of Jeffersonville, and the public and people thereof, as aforesaid, and have been so possessed, used and occupied by said town, the people thereof, and the public, ever since the date of said deed to said trustees, to wit, ever since the said twenty-third day of June, eighteen hundred and two, and are still so possessed.

And as to said last will and testament of said Isaac Bowman, and the codicil thereof annexed, and the probate thereof, and the recording the same in the County of Clark and State of Indiana aforesaid, in manner and form as stated in said complainants' said bill of complaint, says, that of his own knowledge he knows nothing, but that he is advised and believes, that the probate and the recording of the same in the manner and form as stated in said bill, and by complainants therein exhibited, is not available by the laws of Indiana, and if the interests of this respondent in the subject matter in this behalf *is* to be injuriously affected in any way thereby, he shall require strict and legal proof of every material fact. And in addition to the above, respondent saith, that said will and codicil, and the probate, was never recorded in the State of Indiana, until the twelfth day of August, eighteen hundred and thirty-nine. This respondent also says, that as to so much of said bill, as sets forth the settlements and divisions made by the said supposed devisees of said Isaac Bowman, in his said last will and testament among themselves, and the sale and conveyance to said complainant, Burnly, in manner and form as therein stated in said bill in this behalf, he, this respondent, knows nothing; but if his interests in the subject matter in this behalf are to be injuriously affected thereby, he will require strict and legal proof of every material fact; and further, that if said averments are true, that then and in that case the said complainants other than the said Burnly are illegally and improperly made complainants in this behalf; that none of said complainants except said Burnly have any equity in the matter in controversy; that all said complainants, except said Burnly, ought to be made defendants to said bill, and not complainants; and upon this point this respondent will rely at the final hearing of this cause, and shall, for that misjoinder, claim a dismissal of the bill for want of equity, and a misjoinder of complainants.

This respondent is also advised and believes, that the said grant-

ors in the said deed of conveyance to said Burnly in this behalf, were not in actual possession of the land, lots and interests attempted to be conveyed, and that therefore said deed of conveyance is for that reason wholly void; and this respondent insists upon and relies upon that fact as a fatal defect, and shall insist on a dismissal of said bill on that account. But on the other hand this respondent is advised, that if the said grantors were so seised and possessed to enable them to legally convey, that then and in that case the interests of all the complainants, (except said Burnly,) both legal and equitable, are at an end, and they cannot maintain the bill in this behalf, and said Burnly's remedy is at law, and this respondent will insist on the dismissal of the bill for that cause at the final hearing.

This respondent is advised, that it is not true that said trustees of said town were the trustees of said reserved ferry rights of the said Isaac Bowman, and that the legal title is in said trustees, for use of said William Bowman and his heirs, and that the equitable right, title, use and interest, were in said Bowman and his heirs. And this respondent further denies that he, this respondent, or any other person known to this respondent, ever had any notice whatever, either by hearing or otherwise, of the claims of the said complainants, or any part of them, until in the year eighteen hundred and thirty-nine; and that there was not any thing recorded of record that the law construes into notice, and that the people of Indiana are bound to take notice of. No legal notice can be presumed from the state of the facts, and therefore he, this respondent, is an innocent purchaser for value in good faith, and without notice; this respondent is also advised, that it is not true that said trustees of said town were ever at any time seised of any land, lots of land, or slopes or slips, blocks, squares, banks or slopes of land, or of any water privileges, easements, ferry rights, ferry privileges, or rights as Reparian proprietor for the use of said Isaac Bowman and his heirs.

And that he is also advised, that it is not true that said Isaac Bowman had any such rights, interest, claims, liberties or privileges, of, in, to, over, or growing out of said one hundred and fifty acres of land, or any part thereof, or its appurtenances, since the said eighth day of March, eighteen hundred and two, except what he the said Isaac Bowman owned and held by deed of conveyance from said trustees; but this respondent admits it to be true, and asserts it himself as a matter of fact, that the said Marston G. Clark, and the said Joseph Bowman, were the several owners, keepers, and runners of separate and individual ferries, from the said town of Jeffersonville to the Kentucky shore, in their own separate name and individual right; and that this respondent is now the actual, and *bona fide* owner, keeper and runner, of the one equal and undivided half of said ferries, by purchase for a valuable conside-

ration; and for the better understanding of the matter by the court, this respondent will state the following facts, to wit:

On the twelfth day of October, eighteen hundred and two, and continually and uninterruptedly after the said twelfth day of October, eighteen hundred and two, up to the year eighteen hundred and fifteen inclusive, the Governor and Commander in Chief of the Territory of Indiana, had full power and lawful authority to grant and establish ferries from said town of Jeffersonville, across the Ohio river to the Kentucky shore; and that on the twelfth day of October, eighteen hundred and two, the said Marston G. Clark, being the legal owner of lots of land number eleven (11,) twenty-nine (29,) thirty (30,) thirty-six (36,) thirty-nine (39,) sixty-two (62,) one hundred and nineteen (119,) and one hundred and twenty (120,) in the said town of Jeffersonville, and resided thereon; the Governor and Commander in Chief of the said Territory of Indiana, to wit, William Henry Harrison, did, on the said twelfth day of October, eighteen hundred and two, in due form of law, under his hand and the great seal of said Territory, grant to the said Marston G. Clark, a ferry from said town of Jeffersonville, to the Kentucky shore, which said grant is duly recorded in the record books of the recorder's office, of said County of Clark; and this respondent, for the greater certainty, makes a true and certified copy of said grant of said ferry to said Clark, a part of this answer, and for that purpose exhibits it marked with the letter (O,) and which is in the words following, to wit:

"By William Henry Harrison, Esq., Governor and Commander in Chief of the Indiana Territory, licence is hereby granted to Marston G. Clark, of Clark County, to keep a ferry at Jeffersonville in said county, for the transporting of passengers, carriages, horses and cattle, across the Ohio river at said place, he having engaged to conform and comply with all the laws which now are, or may be hereafter made for regulating ferries within the Territory."

In testimony whereof, I have hereunto set my hand, and caused the seal of the Territory to be affixed, at Vin-
[L. S.] cennes, this twelfth day of October, in the year of our Lord eighteen hundred and two, and of the Independence of the United States, the twenty-seventh.

WILLIAM HENRY HARRISON.

By the Governor,

JOHN GIBSON, *Secretary.*

I, John Douthitt, Recorder for the County of Clark, in the State of Indiana, do certify, that the above ferry licence is truly copied from the records now in my office.

In witness whereof, I have hereto set my hand and private seal, (having no seal of office,) this eighteenth day of March, eighteen hundred and forty.

JOHN DOUTHITT, [L. S.]

STATE OF INDIANA, *Clark County, ss.*

I, Henry Harrod, Clerk of the Circuit Court of Clark County, within the second Judicial Circuit in the State of Indiana, do certify that John Douthitt, whose certificate appears hereon written, and who has subscribed his name thereto, is, and was at the time of certifying and subscribing his name aforesaid, the Recorder of our said County of Clark, in the State aforesaid, duly elected, commissioned and qualified.

In testimony whereof, I have hereunto subscribed my name, and affixed the impression of the seal of our said County [L. S.] at the Court house in Charlestown, this thirty-first day of March, eighteen hundred and forty.

Teste : HENRY HARROD, *Clerk.*
Per J. SHELBY, *Deputy.*

And that said ferry was put into operation by said Clark, and kept and run by him legally, up to the fourth day of March, eighteen hundred and fifteen, when he sold and transferred his ferry and all its boats, apparatus and privileges, to one James Lemon; and he, the said Lemon, kept, held, and run said ferry until the ninth day of October, eighteen hundred and twenty-two, when he sold said ferry to one Robert Gray; and on the nineteenth day of the month December, eighteen hundred and twenty-two, the said Robert Gray sold the same to one George White, and he, the said George White, to wit, at the time he purchased said ferry from said Robert Gray, resided in the said town of Jeffersonville, and was the legal owner and possessor of divers lots of land in said town of Jeffersonville, and had and legally owned and possessed, and run a ferry from said town of Jeffersonville to the said Kentucky shore, in full operation, in his, the said George White's, own name, and in his own right, which had been confirmed and granted to him by an act of the Legislature of the State of Indiana, by their enactment, passed at their session, convening in December, eighteen hundred and twenty, which act granting said ferry to said George White, is published according to law, among the general laws of that session, and forms a part of the laws of said State of Indiana, and is still in full force and effect. And this respondent, for the greater certainty, makes a true and certified copy of said Legislative act, a part of this his answer, and for that purpose exhibits it marked with the letter (M.), and which is in the words following, to wit:

An act for the relief of George White, upon the subject of a Ferry

Whereas, George White, of Jeffersonville, in the county of Clark, and State of Indiana, has, for satisfactory reasons set forth in his petition to this General Assembly, prayed that an act might be

passed to confirm him in the right of a certain ferry which he purchased from Samuel Merriweather, and so to alter and extend said privilege as to authorise him to ferry from any portion of the public ground in said town, lying along and bordering on the Ohio river, to the opposite shore or bank on the Kentucky side, or to the mouth of Bear Grass creek. And as it appears reasonable and just that the prayer of said White should be granted, and that the granting of the same will be of public advantage and utility—therefore,

Sec. 1st. Be it enacted by the General Assembly, by the State of Indiana, That the said George White be, and he is hereby, and hereafter authorised to keep a ferry in said town of Jeffersonville, and to ferry off and from any portion of the public ground or commons in said town, lying along or bordering upon the Ohio river, across said river to the opposite shore, or to the mouth of Bear Grass creek; provided the said White shall, within six months after the publication of this act, execute and give a bond with one or more good and sufficient free-holders of said county of Clark, as security in the sum of five hundred dollars, payable to the commissioners of Clark county, or their successors in office; conditioned, that the said White shall keep or cause to be kept the ferry hereby established, agreeably to law, which bond may be given or delivered to the board of commissioners when sitting, or in vacation, filed with the Clerk. And it is furthermore provided, that nothing in this act shall be so construed as to authorise the said White to ferry from any portion of the public ground in said town, which borders upon the Ohio river, and lies immediately in front of any lot or lots owned at this time by any person or persons lawfully entitled to keep a ferry or ferries in said town.

Sec. 2nd. And be it further enacted, That said White, or any person or persons owning or keeping said ferry hereby established, shall be entitled to ask, demand and receive such reasonable rate or rates of ferries as now are or hereafter may be fixed by law, and shall likewise be subject to such fines and penalties, rules and regulations as now are or shall be prescribed by law, for the good government and regulation of ferries established upon the Ohio river, in order to prevent any impositions or unnecessary delays. Provided, however, that said George White shall not hold nor enjoy any other or greater privileges than are now held and enjoyed by other persons in the town of Jeffersonville, who have ferries established according to law; and provided, also, that the said county commissioners of said county of Clark may vacate, set aside, and make void the said ferry hereby established, for or on account of the same not being kept up and attended to, according to the provisions of the act entitled an act regulating ferries, and an act supplemental thereto, or for any of the causes which would authorise said commissioners to vacate any ferry established in pursuance of the aforesaid recited acts.

Sec. 3d. And so soon as this act shall have taken effect, and the

bond required in the first section shall have been given in the manner provided for the bond which was given by Samuel Merriweather, to keep his ferry agreeably to law, shall be considered as void, and the said Merriweather and his security no longer be liable or holden on account of said bond in force by operation of the Constitution.

WILLIAM GRAHAM,
Speaker of the House of Representatives.
RATLIFF BOON,
President of the Senate.

OFFICE OF STATE, CORYDON.

I, Robert A. New, Secretary of State for the State of Indiana, certify the foregoing sheets to be a correct transcript from the original act on file in my office.

Given from under my hand and the seal of State, this twen-
[L. S.] ty-second day of December, eighteen hundred and twenty.

R. A. NEW.

That said George White having so as aforesaid purchased the said ferry granted to said Clark, he, the said White, had then legally vested in him both said ferries, and he kept, owned, and run them until afterwards, to wit, on the third day of July, eighteen hundred and twenty-six, when he, the said George White, sold and conveyed one undivided half of said two ferries and the privileges thereto belonging, to one Charles Steade, who was the legal owner of much land and divers lots of land in said town of Jeffersonville, and who resided in said town of Jeffersonville; and he, the said George White, on the same day, sold and transferred the other half of said two ferries and their two privileges thereto belonging, to one Eliphalet Pearson; and he, the said Pearson, on the same day, sold and transferred his said undivided half of said ferries, to one Ephraim Gilmore—he, the said Gilmore, being a resident of the said town, and being the legal owner of land and lots of land in said town. That they, the said Steade and Gilmore, on said third day of July, eighteen hundred and twenty-six, became the equal and undivided owners of both said ferries, and owned, possessed, kept, and run them, until afterwards, to wit, on the said third day of July, eighteen hundred and twenty-six, the said Steade sold and transferred his undivided half of both said ferries to this respondent, who resided in said town, and then was and still is the legal owner, and possessed of divers lots of land in the said town. That on the said third day of July, eighteen hundred and twenty-six, he, the said Gilmore, and this respondent, became and were the equal and undivided owners and possessors of said two ferries, and, as such owners, kept, possessed, and run said ferries, until the twenty-second day of July, eighteen hundred and thirty-five,

when the said Gilmore sold and transferred his said undivided half of said two ferries to John Shalcross, Charles M. Strader, and James Thompson; and then and there, to wit, on the said twenty-second day of July, eighteen hundred and thirty-five, the said Shalcross, Strader, and Thompson, and this respondent, became the owners of said two ferries, that is to say, the said Shalcross, Strader, and Thompson, owning one undivided half, and this respondent the other undivided half of the said two ferries, and the boats, aparatus, interest, rights, and privileges thereto belonging and appertaining, and that the same has been ever since and still is so owned, possessed, kept, used, and run by them.

This respondent further states, that the said Marston G. Clark, at the time he sold his said ferry to said Lemon, in manner and form before stated, did not convey the same to said Lemon, but made, signed, sealed, and delivered his bond to said Lemon, binding himself to convey whenever he should be thereunto afterwards required. That in the various sales of the same from Lemon and others, holding under him, said bond of said Clark was transferred by assignment thereon; and the said bond having been transferred to the said Shalcross, Strader, and Thompson, and this respondent as aforesaid, they called on said Clark and demanded a deed of conveyance, agreeably to his said bond; and he, said Clark, on the twenty-fourth day of March, eighteen hundred and forty, made, signed, sealed, and delivered, and duly acknowledged a deed of conveyance, bearing date the said eighth day of March, eighteen hundred and forty, conveying one undivided half of said ferry to the said Shalcross, Thompson, and Strader, and the other undivided half thereof to this respondent;—and for the greater certainty makes a true and certified copy of said deed of conveyance of said Clark, a part of this his answer, and for that purpose exhibits it, marked with the letter W; and which is as follows, to wit:

"Whereas, on the fourth day of March, eighteen hundred and fifteen, I, Marston G. Clarke, bound myself to convey to James Lemmon, of Jeffersonville, Indiana, now deceased, all my right to a ferry across the Ohio river at Jeffersonville, granted to me by William Henry Harrison, Governor of the Indiana Territory: And whereas, the said James Lemmon did, on the ninth day of October, eighteen hundred and twenty-two, sell the said ferry privileges to Robert Gray: And whereas, the said Robert Gray did, on the nineteenth day of December, eighteen hundred and twenty-two, sell and convey all his right and title to said ferry to George White, as appears by the several writings mentioned and bearing date as above stated,—reference being thereto had, will more fully appear: And whereas, the said George White did, on the third day of July, eighteen hundred and twenty-six, convey to Charles Steade the one undivided half of the said ferry and the privileges thereto be-

longing, who conveyed the same to Athanasius Wathen; and the said George White sold and conveyed the other half of said ferry to Ephraim Gilmore, who conveyed the same to Charles Strader, John Shalcross, and James Thompson:

Now, therefore, know ye, that I, Marston G. Clark, of the county of Washington, and State of Indiana, do, for myself, my heirs, executors, and administrators, give, grant, bargain, sell, and convey unto them, the said Athanasius Wathen, Charles M. Strader, John Shallcross, and James Thompson, and their respective heirs and assigns, according to their claim as above stated, that is to say, the one half thereof to the said Athanasius Wathen and his heirs and assigns, and the other half thereof to the said Charles Strader, John Shalcross, and James Thompson, and their heirs and assigns, all the right, title, claim, and interest of, in, and to the said ferry privilege, so as aforesaid granted to me by the said William Henry Harrison, Governor as aforesaid, together with all and singular the appurtenances thereunto belonging, to which I might have a claim in virtue of the grant aforesaid,—they complying with laws regulating ferries now in force, or which may hereafter be in force.

In witness whereof, I have hereunto set my hand and seal, the twenty-fourth day of March, eighteen hundred and forty.

M. G. CLARK, [SEAL.]

Signed, sealed, and delivered in presence of
R. W. THOMPSON.

UNITED STATES OF AMERICA,
State of Indiana, to wit:

Be it remembered, that on the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and forty, personally appeared before me, Elijah Newland, a Notary Public, by authority of the law duly appointed and qualified, and dwelling in the county of Washington, the within named Marston G. Clark, whose name appears to the within written instrument, and acknowledged that he signed and sealed and delivered the said instrument for the purposes therein set forth.

In testimony whereof, I have hereunto set my hand, and [L. S.] affixed my Notarial seal, this day and year above written.

ELIJAH NEWLAND,
Notary Public.

I, John Douthitt, Recorder for the County of Clark, in the State of Indiana, do hereby certify, that the above and foregoing instrument in writing, from Marston G. Clark to Athanasius Wathen and others, are truly copied from the records now in my office.

In witness whereof, I have hereunto set my hand and private seal, (having no seal of office,) this twelfth day of May, eighteen hundred and forty.

JOHN DOUTHITT, *R. C. C.* [L. S.]

STATE OF INDIANA, *Clark County, to wit:*

I, Henry Harrod, Clerk of the Circuit Court of Clark County, within the Second Judicial Circuit, in the said State of Indiana, do hereby certify, that the within named John Douthitt, whose certificate appears hereon written, with his proper signature thereto subscribed, was at the time of his certifying and subscribing his name as aforesaid, and still is, the Recorder of the said County of Clark, duly elected, commissioned, and qualified as such.

In testimony whereof, I have hereto subscribed my hand and affixed the impression of the seal of our [L. S.] said court, at the court-house in Charlestown, on the twelfth day of May, eighteen hundred and forty.

Teste: HENRY HARROD, *Clerk.*
Per J. SHELBY, *Deputy.*

This respondent, further answering, saith, that heretofore, to wit, on the second day of July, eighteen hundred and seven, the said William Henry Harrison, still being the Governor and Commander-in-Chief of the said Territory of Indiana, and still having full power and lawful authority to grant ferries, did on the said second day of July, eighteen hundred and seven, in due form of law, under his hand and the great seal of the said Territory, grant a ferry from said town of Jeffersonville to the Kentucky shore, to one Joseph Bowman, who was then the legal owner and possessor of a lot of land, number thirteen, in said town of Jeffersonville, and resided there. And this respondent, for the greater certainty, makes a true and certified copy of said ferry grant to the said Joseph Bowman, a part of this, his answer, and for that purpose exhibits it, marked with figures, (44,) and which is as follows, to wit:

INDIANA TERRITORY:

By William Henry Harrison, Governor and Commander-in-Chief of Indiana Territory, licence is hereby granted to Joseph Bowman, of the County of Clark, to keep a ferry from the landing near the spring, in the town of Jeffersonville, across the Ohio river, to the public road, at the mouth of Bear Grass; he, the said Joseph Bowman, engaging to keep good and sufficient boats, at all lawful hours, for the passage of all travellers, with their waggons, carts,

carriages, horses, cattle, &c.; and for which he is to receive such toll only as may be established by the Court of Quarter Sessions of said county, for his ferry. And the said Joseph Bowman is to enter into bond, as the law directs, with the said Court of Quarter Sessions of the said county, for the said keeping of the said ferry.

Given under my hand and the seal of the said Territory, at Vincennes, this second day of July, in the year of [L. S.] our Lord one thousand eight hundred and seven, and of the independence of the United States the thirty-first.

By the Governor,
WILLIAM HENRY HARRISON.

JOHN GIBSON, *Secretary.*

I, John Douthitt, Recorder for the County of Clark, in the State of Indiana, do hereby certify, that the above ferry licence is truly copied from the record now in my office.

In witness whereof, I have hereunto set my hand and private seal—having no seal of office—this eighteenth day of March, eighteen hundred and forty.

JOHN DOUTHITT. [L. S.]

STATE OF INDIANA, *Clark County, to wit:*

I, Henry Harrod, Clerk of the Circuit Court of Clark County within the Second Judicial Circuit, in said State of Indiana, do certify, that the within named John Douthitt, whose name appears subscribed to the within certificate as Recorder, was at the time of certifying and subscribing his name, as appears within written, and now is the Recorder of said County of Clark, and the State aforesaid, duly elected, commissioned and qualified.

In testimony whereof, I have hereunto subscribed my name and affixed the impression of the seal of our [L. S.] said court, at the court-house in Charlestown, on the thirty-first day of March, eighteen hundred and forty.

Teste: HENRY HARROD, *Clerk.*
Per J. SHELBY, *Deputy.*

And said Bowman put said ferry immediately into operation, according to law, and possessed, owned, kept and run said ferry, until the month of February, eighteen hundred and thirty-seven, when he died, and left surviving him two brothers and two sisters, his heirs at law; he, the said Joseph, having no wife or children, never having been married. The names of said brothers and sisters were as follows, to wit, William Bowman, Leonard Bowman,

Elizabeth Bowman, then the legal wife of John Wealthers, and Susan Bowman, then the legal wife of John Fislar, all of full age, to whom said lot of land, number thirteen, (13,) and said ferry descended. And in the division of the estate of said Joseph Bowman, among said four heirs, the said lot, number thirteen, (13,) fell to the said Susan and her said husband, *James* Fislar. And, as the said ferry could not be divided, they, the said heirs, immediately gave bond and security as ferry owners, and kept and possessed, kept and run said ferry, until they sold out, as follows, namely: on the tenth day of December, eighteen hundred and twenty-five, the said James Fislar, and Susan, his wife, sold said lot of land, number thirteen, and their fourth part of said ferry to this respondent.

And afterwards, to wit, on the sixth day of February, eighteen hundred and twenty-nine, this respondent purchased out the fourth part of said ferry owned by the said William Bowman, and in the year eighteen hundred and twenty-one, the said Leonard Bowman died, leaving nine children, his heirs at law, one of which children, to wit, Elizabeth Bowman, was, and still is the wife of this respondent; and in the year —— he, this respondent, purchased out the interest of the other eight children of the said Leonard Bowman, deceased, and became the legal owner of another fourth part of said ferry of the said Joseph Bowman. And this respondent was then the legal owner of said lot number thirteen in said town, and still remains the owner of said lot, and also owned the one undivided three-fourth parts of said ferry so as aforesaid granted to the said Joseph Bowman; that on the thirteenth day of May, eighteen hundred and twenty-three, the said John Wealthers and his said wife, Elizabeth, sold and transferred their fourth part of said ferry to one James Nesmith; and afterwards, to wit, on the fourth day of July, eighteen hundred and twenty-nine, he, the said Nesmith, sold and transferred the said fourth part of said ferry to said Ephraim Gilmore; and afterwards, to wit, on the twenty-second day of July, eighteen hundred and twenty-five, he, the said Ephraim Gilmore, sold and transferred said fourth part of said ferry to said John Shalcross, Charles M. Strader, and James Thompson, including all and singular his said ferry, ferry rights and privileges, and all interest in the aforesaid three ferries, including boats, engine, apparel, apparatus, skiffs, and tackle, &c., therewith connected; and on that day, to wit, on the twenty-second day of July, eighteen hundred and thirty-five, they, the said John Shalcross, Charles M. Strader, by said purchase, and by certain contract and agreement with this respondent, became the legal and equitable owners and possessors of the one undivided half of said three ferries, and the boats, engines, apparatus, apparel, tackle, &c., thereunto belonging. And this respondent was the legal and equitable owner and possessor of the other undivided half of all and singular the same; and that as such owners and pos-

sessors, they, the said Shalcross, Strader and Thompson, of the one-half, and this respondent of the other half, have ever since so owned and possessed the same, and still own and possess the same; and that ever since the said twenty-second day of July, eighteen hundred and thirty-five, they, the said Shalcross, Strader and Thompson, of the one-half, and this respondent of the other half, have kept said ferry and run it from said town of Jeffersonville to the Kentucky shore; and that they are still so keeping and running said ferry, and intend to continue so to do, until they are restrained by legal proceedings and legal process; and that he, this respondent, and his said partners, use steamboats, and shall continue to do so. And he admits that they refuse to pay rent to said complainants; and that they refuse to account to said complainants for any of the receipts or expenditures of the said concern; and they deny, in whole and in part, the rights, interests, claims and demands of the said complainants in this behalf; and assert, insist upon, and contend, that they are the true, and legal, and equitable owners and possessors, in manner and form aforesaid, of the aforesaid three ferries. That they purchased them *bona fide, without notice, and for good and valuable consideration;* and that they have consolidated the said ferries, as to the operation of running them, and have run steamboats in lieu of scows, ferry-flats and skiffs. And that they have full power and lawful authority, as they are advised, and believe, to own, possess, hold, and run said ferries with steamboats, as they are doing; and that they may lawfully carry and ferry all the persons, beasts, commodities and business of all those ferries with steamboats, if they are sufficient to do so without delay to any person or commodity; and that they are now so doing, and shall continue so to do, as this respondent is advised that they may lawfully do; that this respondent is informed, and believes, that the said several grants of the said several three ferries were, and still are, legal, equitable, and available, both at law and in equity; that each of said ferries was legally put into operation at the times aforesaid, and that each ferry has been continually and uninterruptedly used, occupied, kept and run by said grantees, and those legally holding under them, ever since they were severally established as aforesaid, until the present day, and that they are still so used, occupied, kept and run as aforesaid; that is to say, the said ferry granted to the said Marston G. Clark, from the twelfth day of October, eighteen hundred and two, to the present day, about thirty-eight years; the ferry granted to the said Joseph Bowman, from the said second day of July, eighteen hundred and seven, to the present day, about thirty-three years; and the said ferry granted to said White, by the act of the Legislature, from the date of the grant up to the present day, about twenty years. And that, during all that time, the said ferries were regularly and publicly run, and their operations, as such ferries, well known to said agent of said Isaac Bowman, until the

day of his death, in eighteen hundred and twenty-four, or eighteen hundred and twenty-six, and to the said Isaac Bowman, up to the day of his death, to wit, in the year eighteen hundred and twenty-six; and that neither the said Isaac Bowman nor any other person for him, or them, ever, at any time, forbid the granting or running of said ferries, or either of them; nor did the said Isaac Bowman or his said agent, or any person holding under him, or them, ever apply to have a ferry or ferries granted to them or either of them, at any time; *no* has any such application ever as yet been (made), and there is no ferry in existence now, nor was there ever any ferry in existence from the said town of Jeffersonville, across the Ohio river to the Kentucky shore, but the three above named; nor has there ever been any application for any other ferry or ferries, known to this respondent, or ever heard of by him. That, for the greater certainty, this respondent here makes a true copy of the following transfers and letters, above stated, a part of this his answer, and for that purpose exhibits them marked as follows, to wit:

First. The transfer of the said Gilmore to Shalcross, Strader and Thompson, marked with the letter (X,) and which is as follows, to wit:

This indenture, made this twenty-second day of July, one thousand eight hundred and thirty-five, between Ephraim Gilmore, of the town of Jeffersonville, county of Clark, and State of Indiana, and John Shalcross, Charles M. Strader and James Thompson, of the city of Louisville, and State of Kentucky: *Witnesseth*, that the said Ephraim Gilmore hath, for and in consideration of the sum of three thousand five hundred dollars in cash, and a general warranty deed for thirty-three feet in front of lot number thirty-one (31,) in Jeffersonville, on which a brick house with all the appurtenances (as it) now stands, extending two hundred and one feet back to an alley, all of which the said Gilmore has acknowledged the receipt thereof, hath granted, bargained, sold and conveyed, and doth by these presents, grant, bargain, sell and convey unto the said Shalcross, Strader and Thompson, their heirs and assigns, the one half of the ferry right or privilege in said town, which the said Gilmore lately owned and kept, and which was originally granted to Marston G. Clark; and also, one half of the ferry right or privilege in said town, which the said Gilmore has lately owned and kept, and which was originally granted to George White; and the undivided interest of the ferry of Joseph Bowman, deceased, of a ferry right or privilege of John Weathers and wife, to James Nesmith, and from Nesmith to said Gilmore; and also, one half of the steam ferry boat, now running, with all the appurtenances thereunto belonging or appertaining; and also, all the boats, flats and skiffs, oars, poles, &c.; also, one half the *a* wagon and oxen, and one half of all the wood now on hand that is paid for, and all other things necessarily belonging to said ferry; and also, the undivided half of one

acre of land in Jefferson county, and State of Kentucky, deed from George White and wife, to said Gilmore and A. Wathen, which will more fully appear by having reference to said deed, which the said Gilmore is to make a warranty deed of his half of said land, to the said Shalcross, Strader and Thompson.

Witness my hand the day and year above written.

EPHRAIM GILMORE.

Witness,
THO. WILSON.

STATE OF INDIANA, CLARK COUNTY, *to wit:*

Personally appeared before me, a justice of the peace in and for the county aforesaid, Ephraim Gilmore, whose name appears signed to the above and foregoing instrument of writing, and acknowledged the signing of the same to be his free act and deed, for the uses and purposes therein expressed.

Given under my hand and seal, this twenty-second day of July, eighteen hundred and thirty-five.

THO. WILSON, *J. P.* [L. S.]

STATE OF INDIANA, CLARK COUNTY, *to wit:*

I, Henry Harrod, clerk of the circuit court for the county of Clark, within the second judicial circuit, in the State aforesaid, do certify, that the above named Tho. Wilson, before whom the within instrument of writing, purporting to be a deed from Ephraim Gilmore, to John Shalcross, Charles M. Strader and James Thompson, and whose certificate of the same appears above written, with his proper signature thereto subscribed, is now, and was at the time of receiving such acknowledgment and subscribing his name aforesaid, an acting justice of the peace in and for the said county of Clark, duly elected, commissioned and qualified, and that full faith and credit are due to all his official acts as well in courts of justice as thereout.

In testimony whereof, have hereunto subscribed my name and affixed the impression of the seal thereof, at the court house in Charlestown, the eighth April, eighteen hundred and forty. [L. S.]

Teste: HENRY HARROD, *Clk.*
Per J. SHELBY, *Dep.*

Second. The transfer of said White to this respondent, marked with the figures (94,) and which is in the words following, to wit:

This indenture, made this third day of July, in the year one thousand eight hundred and twenty-six, by and between George White and Charles Strader, both of Jeffersonville, in the county

of Clark, and State of Indiana: Witnesseth, that the said George White hath, for and in consideration of the sum of six hundred dollars to him in hand paid by the said Charles Steade, the receipt whereof is hereby acknowledged, granted, bargained and sold, and doth by these presents, grant, bargain, sell and convey unto the said Charles Steade, his heirs, administrators and assigns, the one half of the ferry right or privilege, which was granted by the Legislature of this State to the said White, to keep a ferry in said town of Jeffersonville; also, the one half of the ferry right or privilege in said (town,) which the said White formerly kept, and has lately rented to E. Pearson, and which was originally granted to Marston G. Clark; also, the one half of all the boats, poles, oars, &c., lately used and now in use at said ferries.

GEORGE WHITE. [L. S.]

Attest:
EPHRAIM GILMORE.

STATE OF INDIANA,
Clark County, ss.

Personally appeared before me, a justice of the peace in and for the county aforesaid, George White, whose name appears signed to the above instrument of writing, and acknowledged to the signing, sealing, and delivery of the same, to be his free act and deed, for the uses and purposes therein expressed.

Given under my hand and seal, this twenty-seventh day of March, eighteen hundred and forty.

THO. WILSON, [L. S.]
J. Peace.

For and in consideration of the sum of six hundred dollars current money of the United States, to me in hand paid by Athanasius Wathen, of the county of Clark and State of Indiana, I do hereby assign and transfer unto Athanasius Wathen, all my interest in the ferry in the within writing, and do authorise the said Wathen to exercise all the ownership over the said within named ferry, that I could do; and I do hereby give him possession thereof.

Witness my hand and seal, this sixth day of February, eighteen hundred and twenty-nine.

C. STEADE. [L. S.]

STATE OF INDIANA,
Clark County, ss.

Personally came Charles Steade, before me, a justice of the peace in and for said county, and acknowledged the signing and sealing the above instrument to be his act and deed, for the purposes therein mentioned.

Given under my hand and seal, this sixth day of February, eighteen hundred and twenty-nine.

SAM. J. STEWARD, [L. S.]
Justice of the Peace.

STATE OF INDIANA,
Clark County, ss.

I, Henry Harrod, clerk of the circuit court of said county of Clark, within the second judicial circuit in the said State of Indiana, do certify that the within named Samuel J. Steward, Esq., before whom the acknowledgment of C. Steade, of the transfer to Athanasius Wathen, appears to have been made, and whose certificate thereof appears hereon written, with his proper signature thereunder subscribed, was, at the time of doing the same, one of our acting justices of the peace in and for our said county of Clark, duly commissioned and qualified as such. As clerk aforesaid, I do further certify that the within named Thomas Wilson, Esq., before whom the within and foregoing indenture from George White to Charles Steade, date third of July, eighteen hundred and twenty-six, appears to have been acknowledged by the said George White, and whose certificate thereof, bearing date the twenty-seventh of March, eighteen hundred and forty, also appears hereon written, subscribed with his own proper signature thereto, is now and was at the time of subscribing the same as aforesaid, an acting justice of the peace in and for our said county of Clark, in the State aforesaid, duly elected, commissioned and qualified, and that full faith and credit are due to all the official acts of the said Saml. J. Steward and Tho. Wilson, Esquires, as well in courts of justice as thereout.

In testimony whereof, I have hereto subscribed my name, and affixed the impression of the seal of our said court, at the court house in Charlestown, the thirty-first day of March, eighteen hundred and forty. [L. S.]

Teste: HENRY HARROD, *Clerk*,
Per J. SHELBY, *Deputy*.

Third.—The transfer of said Weathers and wife, to said Nesmith, and of said Nesmith, marked with the figures (77), and which is in the words following, to wit:

This indenture, made this first day of May, in the year one thousand eight hundred and twenty-three, by and between John Weathers and Elizabeth, his wife, of the one part, and James Nesmith of the other part, all of the town of Jeffersonville, in the county of Clark, and State of Indiana; witnesseth, that the said John Weathers and Elizabeth, his wife, for and in consideration of the sum of one hundred and fifty dollars, to them in hand paid by the

said Nesmith, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, assigned over and conveyed, and do by these presents grant, bargain, sell, transfer, assign over and convey to the said James Nesmith, his heirs and assigns, all their right, title, interest, claim or demand in and to a ferry in said town of Jeffersonville, owned or claimed by the heirs of Joseph Bowman, deceased; also, all the rents which may hereafter become due and payable from George White, on account of a lease which said White holds of said ferry, (excepting one quarter's rent which will be payable to William Bowman, as per order); to have and to hold unto him, the said Nesmith, his heirs and assigns, forever.

And the said John Weathers and Elizabeth, his wife, for themselves, their heirs, executors and administrators, covenant and agree to warrant and defend the same unto the said Nesmith, his heirs and assigns, against all claim or claims, or demands whatsoever, from, or under them. And, in case the right to the said ferry cannot be transferred legally, as above intended, that this instrument of writing is to operate as a perpetual lease to the said Nesmith, his heirs and assigns, during the continuance of the right hereby intended to be made; for which payment in full has already been made.

In witness whereof, we have hereunto set our hands and seals, the day and year above written.

J. WEATHERS, [L. S.]
Witness: E. WEATHERS. [L. S.]
R. H. MURRY.

Jeffersonville, Indiana, July the fourth, eighteen hundred and twenty-nine.

For and in consideration of the sum of seventy-five dollars, to me in hand paid by Ephraim Gilmore, I hereby assign over and transfer to said Gilmore, all my right, title and interest in and to the within named ferry.

JAMES NESMITH. [L. S.]
Attest: GEORGE WHITE.

Fourth. The transfer of said Fislar, and William Bowman, to this respondent, marked with the figures (84,) and which is as follows, to wit:

Jeffersonville, October the tenth, eighteen hundred and twenty-five.

For value received, I do hereby assign all my right and title to one third of the ferry across the Ohio river, from Jeffersonville, to Louisville in Kentucky, on the opposite shore of the river, hereby selling and transferring all my said interest in said ferry to Athanasius Wathen. Witness my hand and seal, this day and date above written.

JAMES FISLAR, [L. S.]
Teste: F. A. YOUNG.

This indenture, made and entered into the sixth day of February, one thousand eight hundred and twenty-nine, between William Bowman, of the town of Jeffersonville, in the State of Indiana, of the first part, and Athanasius Wathen, of the second part, of the same town, and State aforesaid, for and in consideration of the sum of two thousand and fifty dollars, lawful money of the United States, to him in hand paid to William Bowman of the first part, the receipt is hereby acknowledged, have assigned and sold my right to the ferry, formerly owned by Joseph Bowman, deceased, and was renewed in the name of William Bowman, and other names at his death, February sixth, eighteen hundred and twenty-nine.

WILLIAM BOWMAN.

Fifthly. The transfer from Lemmon to Gray, and from said Gray to White, marked with the figures (6, 6, 6,) and which is in the words following, to wit:

Know all men by these presents, that I, James Lemmon, of Clark County, and State of Indiana, do sell unto Robert Gray, of Jeffersonville, all my right, title and interest, in, and to the ferry from Jeffersonville to the opposite shore, together with my interest in, and to a lease given by me to George White, for said ferry for five years, from the first day of January, eighteen hundred and twenty-one, together with the sum of forty dollars, and eighty-seven hundredths, due on the first day of October instant, by the said White; and I do hereby, for my self, my heirs and administrators, agree to warrant and forever defend my title in, and to the said ferry, to the said Gray, his heirs, administrators, or assigns, against all and every person claiming, or to claim the same, for and in consideration of the sum of eight hundred dollars to me in hand paid, the receipt whereof is hereby acknowledged.

Given under my hand and seal, this ninth day of October, eighteen hundred and twenty-two.

JAMES LEMMON. [L. S.]

In presence of
C. PEACELY.

For and in consideration of the sum of eight hundred dollars, to me in hand paid by George White, of Jeffersonville, of Clark County, I hereby assign, transfer, convey and relinquish, to the said White, his heirs and assigns, all my right, title, claim and interest, in, and to the ferry or right of ferriage, which I purchased on the ninth day of October last, of James Lemmon, of Clark County, together with my interest in, and to the lease of said ferry, to said White, given by said Lemmon for five years from the first of January, eighteen hundred and twenty-one.

In witness whereof, I, Robert Gray, of Floyd County, and State of Indiana, have hereunto set my hand and seal, this nineteenth day of December, one thousand eight hundred and twenty-two.

ROBERT GRAY. [L. S.]

Attest: SAMUEL DAY.

Sixthly. The transfers of said Pearson to said Gilmore, marked with the figures (39,) and which is in the words following, to wit:

This indenture, made this third day of July, in the year one thousand eight hundred and twenty-six, by and between Eliphalet Pearson, of Jeffersonville, in the County of Clark, and State of Indiana of the one part, and Ephraim Gilmore, late of the same County, of the other part; witnesseth, that the said Pearson hath, for and in consideration of the sum of six hundred and fifty dollars, to him in hand paid by the said Gilmore, the receipt whereof is hereby acknowledged, granted, bargained, sold and conveyed, and doth by these presents grant, bargain, sell and convey, upon the consideration herein named, unto the said Gilmore, his heirs and assigns, the one half of the ferry rights, or privileges in the said town, which the said Pearson has lately owned and kept, and which was originally granted to Marston G. Clark; also the one half of the ferry right or privilege in said town, which the said Pearson has lately owned and kept, and which was originally granted to G. White; also, the one half of all the flat and skiffs lately used by the said Pearson, for the purpose of ferrying, together with the one half of the polls and oars belonging thereto; it is further agreed, that the said Pearson and family shall have the privilege of crossing ferriage-free at all times.

ELIPHALET PEARSON, Jr.

Attest: GEORGE WHITE.

Seventhly. The deed of conveyance of said trustees to said Marston G. Clark, for his said lots of land number eleven, (11,) twenty-nine, (29,) thirty, (30,) thirty-six, (36,) thirty-nine, (39,) sixty-two, (62,) one hundred and nineteen (119,) and one hundred and twenty, (120,) marked with the figures (9, 9, 9,) and which is in the words following, to wit:

This indenture, made this fourteenth day of August, in the year of our Lord one thousand eight hundred and two, between William Goodwin, Richard Pile, Davis Floyd and Samuel Gwathney, gentlemen, trustees of the town of Jeffersonville, and Indiana Territory, of the one part, and Marston G. Clark, of the County and Territory aforesaid, of the other part: witnesseth, that the said trustees aforesaid, for and in consideration of the sum of three hundred and fifty dollars, current money of the United States, have, and by these presents do give, grant, bargain, sell, alien, release,

convey and confirm, unto the said Marston G. Clark, his heirs, executors, administrators and assigns forever, eight certain lots or parcels of land in the town aforesaid, known and designated on the plan of said town, by numbers eleven, (11,) twenty-nine, (29,) thirty, (30,) thirty-six, (36,) thirty-nine, (39,) sixty-two, (62,) one hundred and nineteen, (119,) and one hundred and twenty, (120,) with the appurtenances, unto the said Marston G. Clark, his heirs, executors, administrators and assigns, to his and their only proper use, benefit and behoof forever.

In testimony whereof, the said trustees have hereunto set their hands, and affixed their seals, on the day and year first above written.

DAVIS FLOYD, [L. S.]
WILLIAM GOODWIN, [L. S.]
RICHARD PILE, [L. S.]
SAMUEL GWATHNEY. [L. S.]

Signed, sealed and delivered in presence of.

INDIANA TERRITORY, *to wit :*

This day, the within named William Goodwin, Richard Pile, Davis Floyd, and Samuel Gwathney, as trustees of the town of Jeffersonville, came personally before me, James N. Wood, Esqr., one of the Judges of the Court of Common Pleas for Clark County, and acknowledged this indenture to Marston G. Clark to be their act and deed.

Given under my hand and seal, this fourteenth day of August, eighteen hundred and two.

JAMES N. WOOD. [L. S.]

I, John Douthitt, Recorder for the County of Clark, in the State of Indiana, do hereby certify, that the above and foregoing deeds, from the trustees of Jeffersonville to Marston G. Clark, are truly copied from the records now in my office.

In witness whereof, I have hereto set my hand and private seal, (having no seal of office,) this twelfth day of May, eighteen hundred and forty.

JOHN DOUTHITT, *R. C. C.* [L. S.]

STATE OF INDIANA, *Clark County, to wit :*

I, Henry Harrod, Clerk of the Circuit Court of Clark County, within the Second Judicial Circuit, in the State of Indiana, do certify, that John Douthitt, whose name appears subscribed to the above and foregoing certificate, is, and was at the time of certifying and subscribing his name aforesaid, the Recorder of our said County of Clark, duly elected, commissioned and qualified.

In testimony whereof, I have hereunto subscribed my name and affixed the impression of the seal of our [L. S.] said court, at the court-house in Charlestown, the twelfth day of May, eighteen hundred and forty.

Teste : HENRY HARROD, *Clerk.*
Per J. SHELBY, *Deputy.*

This respondent further saith, that the said ferry, granted by the governor, as aforesaid, to the said Marston G. Clark, and the ferry granted to the said Joseph Bowman, by the governor aforesaid, were both, afterwards, confirmed by legislative acts; that is to say:—

First. By the act of the Territorial Legislature, approved seventeenth day of September, eighteen hundred and seven, by the fifth section of said act.

Secondly. By an act of the first Legislature under the State Constitution—act of the twenty-seventh day of December, eighteen hundred and sixteen—the second section confirms both these ferries, and legalises all the transfers, and confirms the ferries in the assignees of the grantees, and to the assignors of assignees, and all the rights, immunities and privileges of the original grantees.

These acts are public acts, and the court is bound to take notice of them.

This respondent, further answering, saith, that he is a citizen of the town of Jeffersonville, and has been for many years, say about twenty-five years, and that he has recently been elected a member of the Town Council, and is now acting as such; but he positively denies all fraud or collusion with the said Marston G. Clark, or Joseph Bowman, or with any other person; and also positively denies, as far as he knows or has heard, *or* fraud or collusion at any time with any person, on the part of the said Marston G. Clark, and said Joseph Bowman, or either of them. This respondent also denies most positively any fraud or collusion on the part of any person, at any time, respecting said ferries, that ever he knew or heard of. And further, this respondent, and all the public, as far as respondent ever heard, supposed said ferries to be lawful, and there was nothing to exercise fraud about.

And this respondent most positively denies, that the Council of the said town ever had any thing to do with the said ferries, in any way, or has interfered with them in any way; and therefore, they have (not) committed any fraud about the matter, nor have they connived or winked at the matter; for they have had nothing to connive or wink at; nor has any member of said council any thing to do with the business, either directly or indirectly, except this respondent; and he as councilman has had nothing to do with the matters in controversy. The rights of this respondent to these ferries did not come from or through said council. And he had

used, enjoyed, possessed and run said ferries, long before he was councilman.

This respondent further states, as a matter of fact, that the city of Louisville, in the state of Kentucky, is the greatest commercial point in the western country, and a place where more travellers, and speculators, and traders yearly concentrate, or pass through, than any other point on the western waters.

And respondent is informed, that such was the fact, as early as the year eighteen hundred and two, and has continued so ever since; and that in consequence of the falls in the Ohio river being three or four miles long, and Louisville and Jeffersonville both being at the head of the falls aforesaid, and Jeffersonville being nearly opposite to said city of Louisville, all ferries from Jeffersonville to the Kentucky shore are ferries from Jeffersonville to Louisville; and that said town of Jeffersonville is now, and was as early as the year eighteen hundred and two, a point where a number of the roads on the north-west side of the Ohio river concentrated to cross the Ohio river to Louisville.

Therefore, it seems to this respondent to be uncandid to charge the government, and public authorities, and every body concerned, with fraud and collusion, because ferries were established and run across the Ohio river from that important point. And the idea is equally novel to this respondent, that the said Isaac Bowman, having reserved the right of applying to government to grant him one or more ferries at that point, thereby entirely cuts off the right and power of the government to grant a ferry to any other person.

The complainants claim to have *rested* from the arm of government the whole *wright* and power of granting that franchise to any person but the said Isaac and his heirs, or those claiming under him or them, simply by the said Isaac Bowman's having reserved the right of applying for one or more ferries for himself, and that reservation being made in contract between the said Isaac and the town of Jeffersonville, to which contract the government is not a party.

If that doctrine be true, the communication between Louisville and Jeffersonville would stand on a precarious footing indeed.

Thirty-eight years have rolled away since Jeffersonville was established; and the said Isaac Bowman hath never as yet applied to the government to grant him a ferry at that point; nor has any person under him applied for the grant of that franchise, and perhaps never will.

If the position taken by the complainants can be sustained, all right of public way may be forever barred, and shut up from the said town of Jeffersonville across the Ohio river; for the public has no power to compel these complainants, or their heirs or assigns, to establish, keep and run ferries at that point.

This respondent further answering, saith, that, for the greater certainty, he has at his own expense employed two surveyors and

engineers of public and notorious high standing and character, as scientific, practical, correct and sufficient surveyors, engineers and draftsmen, to go to the records of Clark county aforesaid, and draw off a true plan and plat from the plan and plat upon record of said town of Jeffersonville; and that this plat made by them is certified by said engineers, and by the recorder to be correct—*exactly correct*; and by said map, it is clearly demonstrated, that said Isaac Bowman has left no bank or slope of ground between Water street of said town and the river, in which he could claim any right as Reparian proprietor. The lots are one hundred and ninety (190), one hundred and ninety-one (191), and one hundred and ninety-two, run into the water at low water, and the land along the river above said lots, that is, marked "Commons on the River Bank," runs into the water at lowest water, it is believed. The commons, as platted of record, is at Front street, two hundred and twenty feet wide, and two hundred and twenty feet runs into the river at lowest water it is believed.

This certified plat this respondent makes here a part of this his answer, and for that purpose exhibits it, marked with the letters H, A, M, and which is as follows:

This respondent further answering, saith, that complainants are wholly mistaken when they suppose that the clear proceeds of said ferry has ever as yet been as much as six thousand dollars per year.

This respondent will candidly show the expenses of said ferry for the ten years that he has attended to it; and it is as follows, to wit:

First three years—hands, &c. -	$7,000 00	
Horse boat (lost) &c., - -	1,500 00	
		$8,500 00
Next four years, flats, skiffs and oars, steamboat not good, - -	8,500 00	
Engine bursted, - - - -	3,500 00	
Hands, &c. - - - -	32,000 00	
		44,000 00

Brought forward, - - - - -		$52,500 00
Last three years—two steamboats,	18,200 00	
Wharf, wharf chains, &c. including road up bank, - - - -	2,000 00	
Donation to Silver creek bridge, -	1,300 00	
Hands, fuel & expenses, - -	27,000 00	48,500 000
Total amount, - - -		$101,000 00

This respondent further states that he is himself a mechanic, and he has during the whole of the above ten years, given his whole mechanical skill and time to said ferry and boat building; and his services have been worth more than one thousand dollars per year to the concern; but say one thousand dollars per year for ten years, is ten thousand dollars, which, add to the above, makes a total expenditure of one hundred and eleven thousand dollars in ten years. This respondent is not certain that the above is correct, but he is certain it is not too much—he thinks considerable at times has been paid out that he never charged upon any account or book.

As to the receipts for ferriage, no account was ever kept—the money was daily and weekly paid out, and the concern always in debt, and largely indebted until last year. The last year was a successful year and much money was made; and respondent supposes that the concern is now about even with itself; but it has not paid respondent for his ten years' services anything; nor paid any interest as yet on monies expended. This ferry is a difficult one, being at the head of the falls, and having to run down one side about a mile, and up the other the same distance, every time the river is crossed. And the great loss of boats at that point by ice every winter renders it extremely precarious. And while it was run by flats, skiffs and horseboats, it sunk money, and was so understood by the owners; for sales of the several ferries, from time to time, avarar*a*ged about thirty or forty dollars as a price, for many years.

The last three or four years, prices have been higher. The first steamboat was a great loss, but the ferry now consists of two new steamboats, properly constructed, and if they can be preserved from ice, &c. until they wear out, money will be made. But all depends upon total uncertainty.

This respondent is charged with claiming the right to exclude complainants from a ferry from Jeffersonville to Kentucky, across the Ohio river; but he denies ever having set up any such claim. This respondent claims his own ferry; but does not dispute the right of government to grant additional ferries. He denies the right of Government, and he denies the right of this court to take his ferries from him, and give them to complainants or any person else.

It is very probable that the government will grant other ferries from that town to the Kentucky shore, to some person some day,

but no person has as yet applied for such grant, as this respondent is informed and believes.

This respondent further saith, that he is informed and believes, that this suit is commenced in this behalf in fraud of law. That the said complainants have no beneficial interest in the said matters in the said bill in this behalf contained, or if any interest, it is very little; that said conveyance by said Bowman to said Burnly, is in fact for one Samuel H. Patterson and one Samuel Lohery, both of whom permanently reside in the State of Indiana; and the said Patterson has for many years past resided in the said State of Indiana, and that they are the true purchasers and owners of the matters in controversy, and that said Burnly was made the grantee to enable said Patterson and Lohery to be security for complainants, as respondent is informed and believes, and have said matters contested and adjudicated upon in this court contrary to law; and that the said Patterson is now the maker of the said bond, that is filed as security for costs in this behalf, and he is the beneficial owner of all, or at last part of the matters in controversy; he is not entitled to stand as security for cost. And further, this respondent shall, in the final hearing of the case, claim a dismissal of the bill for want of jurisdiction; the true owners being citizens now, and the said Patterson was a citizen, when the matters in controversy were purchased from said Bowman, and has ever since been. This respondent denies all and all manner of fraud and collusion, with which he stands charged; and having, as he supposes, fully answered, and therefore confesses, that so much of said bill of complaint, as is not denied, traversed, avoided or required proof of, is true, and prays to be dismissed with cost, &c.

ATHANASIUS WATHEN.

Be it remembered, that now, here, on the eighteenth day of May, eighteen hundred and forty, the said above named and signed Athanasius Wathen, the above defendant, came into open court, and being duly sworn, upon his oath saith, that his foregoing answer so far as is founded upon his own information, is true, and so far as it is founded on the information of others, he believes to be true.

A. WATHEN.

Sworn and subscribed to in open court, May the eighteenth, eighteen hundred and forty.

HORACE BASSETT, *Clerk.*

Be it further remembered, that at the said term of said court last aforesaid, and on said judicial day last aforesaid, come the parties by their attorneys aforesaid, and the defendants, to wit, the mayor and the common council of the town of Jeffersonville, by Stephen

C. Stevens, their said attorney, file their answer to the said complainant's bill of complaint herein, which answer is in the words following, to wit:

STATE OF INDIANA,
Clark County, Town of Jeffersonville:

Common council of said town of Jeffersonville, met: Present, Isaac Haskill, mayor; Henry French, Benjamin Hensly, sen'r, Daniel Trotter, Athanasius Wathen, Thomas J. Howard, Peter Myors and Charles W. McGill, councilmen.

On motion, it is resolved, that the answer of the said town of Jeffersonville, one of the defendants to the bill of complaint of Isaac S. Bowman, and others, filed in the circuit court of the United States for the District and State of Indiana, against the said town of Jeffersonville, and others, shall be and is in the words and figures following, to wit:

The separate answer of the town of Jeffersonville, one of the defendants to the bill of complaint of Isaac S. Bowman, and others, filed in the circuit court of the United States for the District and State of Indiana, against said town and others:

This respondent, saving and reserving now and at all times hereafter, all and all manner of exceptions to the manifold errors, uncertainties, imperfections, defects, mistakes and untruths in said bill contained, for answer thereunto, or so much thereof as respondent is advised is material to make answer unto, she answering saith, that the inhabitants of said town in the county of Clark, and State of Indiana, are a body politic and corporate, by the name and style of the "Town of Jeffersonville," and by that name have perpetual succession; and by that name may sue and be sued, plead and be impleaded, defend and be defended against, in any court of law or equity, with full power to contract and be contracted with, to borrow money, have and use a common seal, and make and enforce all by-laws and ordinances necessary for the good government and welfare of said town. That the territorial limits and jurisdiction of said corporation includes all the original plat of said town, and the out-lots with all the additions to that time made and recorded, or that might thereafter be made and recorded in the office of the recorder of said county of Clark, and for all purposes whatever, extend southwardly to the utmost limits of the State of Indiana, and to the utmost limits of the jurisdiction of the State of Indiana over the Ohio river. The officers of said corporation are a mayor, a common council, an assessor, a collector, a clerk and a marshal. The general powers of said corporation for municipal purposes, are all the legislative, judicial, ministerial and executive powers, duties and privileges, usually granted to such like municipal corporations. And in particular, said corporation is, among many other things, expressly directed to take

possession of and exercise exclusive jurisdiction and controul over all the streets, alleys and lanes of said town and corporation, with full power to open, grade, and McAdamise the same, and dircet the location and the manner of their running into the river.

And to enable the said corporation to carry said powers over the said streets, alleys and lanes, into uninterrupted effect, the general laws of the State of Indiana respecting roads and highways, are excluded from the territorial limits of said corporation.

Said corporation is also further empowered to locate, build and construct wharves, &c., and levy and collect wharfage, &c., and regulate and controul the landing of all boats and vessels, &c. And, also, fully empowered to take and hold possession of, and regulate and controul all the property of the said town, both real and personal, together with all commons, easements and appurtenances.

This respondent further saith, that the said town of Jeffersonville was formerly, by an act of the Legislature of the Indiana Territorial government, incorporated in the year eighteen hundred and seven; but the powers and duties of said corporation were meagre, badly defined and limited. And this respondent is informed that the corporation died a natural death by non aser.

Respondent is also further advised, that said town was afterwards incorporated several times by several acts of the Legislature; but through defects in the enactments, they severally became, in a short time, officially dead. And that afterwards, to wit, on the twenty-eighth day of January, eighteen hundred and thirty-nine, the present act of incorporation was approved by the inhabitants of the said town of Jeffersonville, and they became, and were, incorporated as above set forth. But this respondent is advised that it is not true that the present incorporation is, or that any of the preceding corporations, were a successor, or successors, to the said trustees, created by the deed of said John Gwathney, in any legal sense of the term.

And they are further advised that the present corporation, in legeal sense, is not a successor to any of the former corporations; and that the said former corporations were not, in any legal sense, successors of each other.

Respondent is also advised that the deed of conveyance of John Gwathney to the said trustees, by him created, did not make them a body politic or corporate—nor did it give them any powers, municipal or otherwise, as a corporation. Said trustees were mere naked trustees, in whom said Gwathney vested the legal title of the said one hundred and fifty acres of land, in trust for, and to the use of said town of Jeffersonville. And so soon as said town was planned, and platted, and recorded, and the lots of land were sold and conveyed to the purchasers, the duties of said trustees ceased, and the inhabitants of said town went into possession and use, and the occupansy and the privileges, issues and profits of the estate, lands, &c., vested in said trustees for the use of said town;

and being so possessed in law and in fact, the absolute estate in law and equity became transferred to the use and possession of said town. And the said trustees made, by the deed of said Gwathney, had nothing further to do; and this was the view that was taken of the subject by said trustees, as respondent supposes, judging by the acts of said trustees—for the said trustees never had a meeting, nor did they ever do an official act after they conveyed the lots sold at the first sale. They appear to have considered themselves officially dead as to any thing they had to do.

This respondent denies being seised of any lands, bank of land, slope of land, or bank, slip, or piece of land, or any interest of, in, to, or growing out of any lands, bank of land, slope of land, slip or piece of land, or any right, privilege, easement, ferry right, or privilege, or any aquatic or appurtenant right of any name or nature, to, and for the use of said complainants, or any, or either of them.

Respondent also denies that the said complainants, or any, or either of them, have the said land, banks of land, slips and slopes of land, rights, privileges, ferry, wharf, dock or quay, rights and privileges, &c., by them asserted, set up and claimed in their said bill in this behalf, or of any other name or nature, either in law or equity, except the lots of land conveyed to said Isaac Bowman by the said trustees. These lots are conveyed by their numbers, and belong to said Isaac Bowman's heirs, devisees or grantees, as respondent supposes—though even of that respondent knows nothing.

Respondent is also advised that said complainants are not, nor either of them, Reparian proprietors, or a Reparian proprietor, of any bank of land, slope of land, slip or piece of land, or any break of land, or any landing place, or place for a wharf, dock or quay, between the said town of Jeffersonville and the said Ohio river; nor have they, or either of them, any ferry or privilege there more than any other non-resident lot holder of said town.

This respondent further saith, that all the ground along the Ohio river, between Water street and the Ohio river, and above Front street, is a common, and belongs to said town as such—and is within the territorial limits of said corporation, and is in the possession and control of said corporation, for the use of the public, as respondent is advised; and that said commons cover all the land to the lowest water mark of the Ohio; and, further, that the said town is the Reparian proprietor of all the margin, banks, slopes and slips of land along the said Ohio river, for the whole length of the one hundred and fifty acres on which said town stands—and, therefore, all rights and privileges of wharfs, docks and quays, &c., and all ferries, easements, and aquatic rights of Reparian proprietors, as to use, occupancy and benefit vest in said town, and belong, both at law and equity, to said town.

This respondent further answering, saith, that as to the ferry of said Wathen this respondent knows nothing, only that such a ferry exists. The general understanding is, that three distinct ferries

from said town to Louisville have existed for many years; and that said three ferries now vest in said Wathen and his partners.

But this respondent denies having asserted, connived at, or winked at the claims or conduct of said Wathen and his partners. And this respondent has never, as yet, supposed that the town of Jeffersonville was bound to have any thing to do with the controversy between said Wathen and said complainants; but being unwillingly made defendants, she is advised that the rights of said town should be asserted; whether said ferries of said Wathen are legal or not, this respondent, with pleasure, submits to this court.

If the court shall suppose that it has jurisdiction over the ferries of Indiana, but at the same time respondent must be permitted to protest against, and wholly deny jurisdiction and powers of this court to interfere with ferries and ferry rights in the State of Indiana, and shall insist upon the bill of complainants being in the end dismissed for the want of equity and jurisdiction, this respondent shall also insist upon a dismissal of complainants' bill for a misjoinder of complainants, and also for a further fact that the remedy of complainants, if any they have, is at law. As to all the rest and residue of said complainants' said bill of complaint respondent knows nothing but hearsay, and cannot admit it, nor expressly and knowingly deny it; but asks proof of every material fact that is in any way calculated to militate against the rights and interest claimed by said town of Jeffersonville. Respondent denies all, and all manner of fraud and collusion, wherewith respondent stands charged. And having fully answered, traversed, and denied all that is material, prays to be dismissed with costs, &c.

I, Benjamin F. Clark, clerk of the Board of the Common Council of the town of Jeffersonville, do hereby certify that the foregoing answer of the town of Jeffersonville, one of the defendants to the bill of complaint of Isaac S. Bowman and others, filed in the Circuit Court of the United States, for the District and State of Indiana, against said town and others, is a full, true, and complete copy of the answer of the record now in my office, as resolved by said Board.

In testimony whereof, I do hereunto set my hand and seal as clerk aforesaid to the said town (having no corporate [L. S.] seal,) this fourth day of November, eighteen hundred and forty.

BENJAMIN F. CLARK,
C. B. C. C. T. J.

And day is given the parties herein.

And be it further remembered, that afterwards, to wit, on Wednesday, the eighteenth day of November, in the year of our Lord one thousand eight hundred and forty, being the third Judicial day of the term aforesaid, of the court aforesaid, before the Honorable

Jesse L. Holman, Judge as aforesaid, come the parties, and the complainants, by their said solicitors, file their certain replication to the answers of said defendants heretofore filed in this behalf, which said replication is in the words and figures following, to wit:

ISAAC S. BOWMAN, GEORGE W. S. BOWMAN, ROBERT C. BOWMAN, WASHINGTON M. BOWMAN, BRINKER and his wife, REBECCA BOWMAN,
vs.
ATHANASIUS WATHEN, *et al.*, the Common Council of the town of Jeffersonville.
} In Chancery.

The said complainants, by Philip Sweetser, their solicitor, come and say, that they aver and will ever maintain as the Honorable Court shall direct, that the matters and things in their said bill contained are true, and that the said answer of said Athanasius Wathen, (and the matters therein contained) are untrue. Wherefore he prays the court to decree as in the said bill of complaint they have prayed.

PHILIP SWEETSER,
Solicitor for Comp.

And the said complainants come and say, that they aver and will maintain that the matters and things in the said bill contained are true, and will prove the same as the said court shall direct; and that the matters and things in the answer of the Common Council, in the said town of Jeffersonville, are untrue. Wherefore they pray as they have above in the said bill of complaint prayed.

PHILIP SWEETSER,
Solicitor for Comp.

And this cause is continued till the next term of this court.

And be it further remembered, that afterwards, to wit, at a Circuit Court of the United States, begun and holden at Indianapolis, within and for the Circuit and District aforesaid, before the Honorable John McLean, one of the Associate Judges of the Supreme Court of the United States, and the Honorable Isaac L. Holman, District Judge as aforesaid; begun and holden on Saturday the twenty-second day of May, in the year of our Lord one thousand eight hundred and forty-one, being the sixth judicial day of the May term of said court, come the complainants, by their said solicitors, Brown and Sweetser, and the said defendants by their said attorney, Stephen C. Stevens, come also, and after argument had, submit this case to the court on the bill, answers, replications, and exhibits aforesaid, and on the following agreement in writing, and depositions as follows—that is to say:

Agreement.

In the Circuit Court of the United States, at Indianapolis.

ISAAC S. BOWMAN,
vs.
A. WATHEN, *et al.* } Chancery.

In this case, to save useless expense and trouble, it is agreed that all the exhibits of both complainants and defendants are to be considered as legally proved, and be used as evidence accordingly, except the plats of the town of Jeffersonville—they are to be established by proofs in the legal way.

Secondly. The parties dispense with the rule docket in this case, and no rites are to be taken except in term time.

PHILIP SWEETSER,
Solicitor for Complainants.
STEPHEN C. STEVENS,
Solicitor for Defendants.

November 27, 1840.

Depositions, to wit:

ISAAC S. BOWMAN, *et al., complainants,*
vs.
A. WATHEN, *et al., defendants.* } In Chancery.

The defendants in the above entitled cause will take notice, that on the twenty-first day of April, eighteen hundred and forty-one, at the office of Thomas Wilson, Esq., in the town of Jeffersonville, Indiana, the complainants in the above entitled cause will by their counsel proceed to take the depositions of William French, Peter Myers, Ephraim Gilmore and others, to be read as evidence in behalf of the complainants in the above entitled action, and to continue from day to day until they are taken.

Yours, &c.
SWEETSER & BROWN,
Solicitors for Complainants.

Delivered a copy of the above notice to A. Wathen, on the nineteenth day of April, eighteen hundred and forty-one, in Jeffersonville, Indiana.

M. G. C. PILE.

To the Circuit Court of the United States for the District and State of Indiana.

The following depositions of Ephraim Gilmore, Peter Myers,

Andrew Fite and William French, were taken at the office of Thomas Wilson, Esq., a justice of the peace for Clark county, Indiana, in Jeffersonville, to be read in evidence on behalf of said complainants in a certain suit in chancery in the circuit court of the United States for the district and State of Indiana, wherein Isaac S. Bowman and others are complainants, and A. Wathen and others are defendants. The deponent, Ephraim Gilmore, of lawful age, and first duly sworn, deposes to interrogatories propounded by complainants, to wit:

1st. By complainants.—Do you know that A. Wathen or any other of the defendants had notice, or were informed that Isaac Bowman, deceased, had a claim to a ferry privilege across the Ohio river, from Jeffersonville to the Kentucky shore? and, if yea, at what time had they this information?

Answer.—I have heard the defendant, A. Wathen, in conversation say, that Isaac Bowman pretended to have a claim to a ferry privilege from Jeffersonville across the Ohio river, to the Kentucky shore; this I heard about years since, as well as recollected.

2nd, by same.—How long have you lived in and near Jeffersonville?

Answer.—About twenty-five or twenty-six years in the town and its neighborhood.

3rd.—Was Bowman's right of ferry known, and generally spoken of during all that time by the citizens of Jeffersonville, and did defendant Wathen reside in Jeffersonville all that time?

Answer.—As well as recollected, I became interested in the ferry at Jeffersonville, in eighteen hundred and twenty-six, and it was some two or three years after, that Isaac Bowman's ferry privilege was generally spoken of by the citizens of Jeffersonville, and defendant, Wathen, has resided in Jeffersonville since eighteen hundred and twenty-six.

4th.—Do you know whether or not, there is or ever was a common or vacant ground between Front street and the Ohio river, in Jeffersonville?

Answer.—I know of none except a common or lawn bank at the lower end of the town, and that I only know from hearing others speak of it as such.

Cross-interrogated by the defendant Wathen.

Question 1st.—Have you had any interest in the ferry now claimed by the defendant Wathen; if so, when did you dispose of it; and if the ferry privilege is suppressed, or enjoined, will you not be liable to refund the purchase money?

Answer.—I had an interest, but have sold it some five or six years since. The transfer was in writing—what the legal effect of that may be, I do not know, bnt I never expected to be held responsible for the title, believing the title was good. And further this deponent saith not.

EPHRAIM GILMORE.

Also, the deposition of Peter Myers, taken at the same time and place by the complainants, to be read in evidence in the same cause. The deponent being of lawful age, and first duly sworn, answers to interrogatories as follows:

Question by complainants.

1st.—Have you been engaged on the ferry boats of defendant, Wathen, at Jeffersonville; if yea, state what the income of said ferry is per year?

Answer.—I have been engaged on the boats of defendant, Wathen; was collector, and paid the money over generally, daily; some days the collections were more, and some less than from twenty-five to thirty-five dollars; my best impression is, that the gross amount of ferriage would be by the year, from eight to ten thousand dollars.

On cross-examination by defendant, Wathen.

Deponent says, he was engaged on the boat in ferrying between three and four years, and left the ferry two years since, last December; and that the expense of running boat, for hands and fuel, would average from twelve to fifteen dollars per day; the gross amount of ferriage spoken of above, included the ferriage on both sides of the river, the same boat and hands performing the ferriage to and from both sides. And further this deponent saith not.

PETER MYERS.

Also, the depoistion of Andrew Fite, taken at the same time and place, by the complainants, to be read in the same cause—deponent being of lawful age, and first duly sworn, deposes to interrogatories, to wit:

Question 1st by Compl's.—How long have you been acquainted with the town of Jeffersonville?

Answer.—I knew the place before the town was laid out.

2nd, by same.—What was the width of Front street?

Answer.—My understanding always was that it was sixty feet wide.

3d, by same.—Was there a slip of ground between Front street and the Ohio river when the town was laid off; and is there now, at various points, more than sixty feet from the edge of the street next the buildings to the break of the river bank?

Answer.—I knew of the burying of two children on the bank of the river, and where they were buried is now washed away. I have frequently seen John Bowman and others drive their waggons on the river side of a tree, that stood some fifteen or twenty feet out side of the locust trees that now stand within a few feet, say four or five, of the river bank—this was done since the laying off the town. The children were buried still further out, but before the town was laid out; their graves were still to be seen when the town was laid out. The locust trees referred to above, as now standing, are one hundred feet, as *stept* by me this day, from the buildings directly across the street; and when the town was laid off, it

was full one hundred and fifty from the lots to the bank of the river between First and Second or Spring street; and it was much wider on the square below, for I recollect that after the town was laid out, Judge Thomas T. Davis cultivated a garden between front street and the river; and where the garden then was, is now partly a bare rock in low water, but it is still more than sixty feet from the lots to the break of the hill where Davis' garden was.

4th, by same.—State all you know of Isaac Bowman's claim to a ferry privilege, and whether defendant Wathen was or not apprised of Bowman's claim to such privilege.

Answer.—When the town was laid out, it was the common report, and generally believed, that Isaac Bowman had reserved a ferry privilege, and his reservation has been a matter of conversation with the citizens generally since. I have no positive knowledge of defendant Wathen's knowing of Isaac Bowman's ferry privilege. He was a citizen of the town, and one of the trustees of the town as far back *as far back* as fifteen years; and further deponent saith not.

ANDREW FITE.

Adjourned by consent until to-morrow morning, Thursday, 9 o'clock.

THOS. WILSON, J. P.

Thursday morning, nine o'clock, the parties appeared, and the deposition of William French, of lawful age, and first duly sworn, is taken to interrogatories for complainants, as follows, to wit:

Question 1st, by complainants.—State the present value of steam ferry-boats, now owned by defendant Wathen, and employed at the ferry from Jeffersonville across the Ohio river to the Kentucky side.

Answer.—I think the oldest boat worth six thousand five hundred dollars; the new boat is worth also about six thousand five hundred dollars.

On cross-examination by defendant, Wathen.—The deponent states he has not examined the boats since last year, when he repaired the old boat. She had been in dock for repairs; and further deponent saith not.

WILLIAM FRENCH.

The foregoing depositions of Ephraim Gilmore, Peter Myers, Andrew Fite and William French, were taken, subscribed and sworn to, before me, Thomas Wilson, a justice of the peace for the county and State aforesaid, at my office in Jeffersonville, Clark county, Indiana, in the presence of the parties at the times as stated in the caption thereto, to be read as stated in the first caption.

Given under my hand and seal, at Jeffersonville, this
[L. s.] twenty-first day of April, eighteen hundred and forty-one.

THOS. WILSON, J. P.

Madison, April 8th, eighteen hundred and forty-one.

Isaac S. Bowman, George W. S. Bowman, Washington M. Bowman, Robert C. Bowman, Brinker and Albert T. Burnly, and Mary Brinker and Rebecca Bowman, infants, by their next friends, George W. S. and Isaac S. Bowman.

You and each of you will please to take notice, that at the town of Jeffersonville, county of Clark, and State of Indiana, at the office of the Mayor of the said town of Jeffersonville, and before the said Mayor or some other person, authorised to take depositions on the third day of May, eighteen hundred and forty-one, between the hours of nine o'clock in the forenoon, and six in the afternoon of said day, I shall commence taking the depositions of Marston G. Clark, Edward F. Lee, J. W. Henning, George White, Henry Hurst, William D. Beach and others, and shall continue taking the same, from day to day, between the hours aforesaid, until all are taken; which depositions, when so taken, are to be read in evidence on the hearing and trial of a certain suit in chancery in the Circuit Court of the United States for the district and State of Indiana, where you are complainants, and I together with others are defendants, now pending to be tried. Respectfully,

ATHANASIUS WATHEN.

I hereby certify, that I delivered to Philip Sweetser, attorney for the complainants, a true copy of the within notice, this twelfth day of April, eighteen hundred and forty-one.

LUCIAN BARBER.

A true copy of the within notice is, this twelfth of April, eighteen hundred and forty-one, filed in the Clerk's office of the United States Circuit Court, for the district of Indiana.

H. BASSET, *Clerk.*

A true copy served on me this twelfth day of April, eighteen hundred and forty-one.

P. SWEETSER,
Solicitor for Compl'ts.

STATE OF INDIANA,
Clark County, Town of Jeffersonville, to wit:

Be it remembered, that on the third day of May, eighteen hundred and forty-one, between the hours of nine o'clock in the forenoon, and six o'clock in the afternoon of said day, in the town of Jeffersonville, county of Clark and State of Indiana, aforesaid, at the office of the Mayor of said town of Jeffersonville, before Thomas Wilson, one of the justices of the peace of the county of Clark aforesaid, the deposition of William Bowman, James W. Henning,

Edward F. Lee, Lloyd White, and Charles Steade, were taken in pursuance of the notice hereto annexed, signed on the back thereof, in one place, "H. Bassett, clerk," in another place, "Lucian Barber," in another place, "P. Sweetser, attorney for the complainants," to be read in evidence on the trial and hearing of a certain suit in chancery, wherein Isaac S. Bowman, George W. S. Bowman, Washington M. Bowman, Albert T. Burnly, and others, are complainants, and Athanasius Wathen (with others) is a defendant. The said witnesses all being by him, the said Wilson, duly and legally sworn as witnesses for the said defendant, Wathen, to speak and give in evidence, as such witnesses, the truth, the whole truth, and nothing but the truth, in the premises. And the said witnesses being all of legal age, and disinterested, were sworn as aforesaid, and did depose and give in evidence under their said several oaths, the following answers to the following questions, to wit:

Deposition of William Bowman.

William Bowman, being duly sworn as above, upon his oath deposes and gives in evidence the following answers to the following questions, to wit:

1st question. What is your age?

Answer. About fifty-three years.

2nd question. How many years have you resided in the county of Clark, and the town of Jeffersonville?

Answer. The town of Jeffersonville was and is my home, ever since it was a town.

3rd question. Was you personally acquainted with John Gwathney, the agent who laid out said town of Jeffersonville?

Answer. I was.

4th question. Where did the said John Gwathney reside at the time he laid out said town; and how long afterwards did he reside there?

Answer. At the time he laid out the town, he resided in the town of Louisville, Kentucky, and for many years afterwards, say until the year eighteen hundred and seventeen, or eighteen hundred and eighteen, or it might have been eighteen hundred and nineteen, or eighteen hundred and twenty, when he left Louisville.

5th question. While the said Gwathney resided in Louisville, was he generally acquainted with the affairs in the town of Jeffersonville?

Answer. I believe he was, as the town of Louisville was on the opposite side of the river, in sight of the town of Jeffersonville, and he was acquainted with all the original *sellers* of the town of Jeffersonville, and was frequently in the town of Jeffersonville, and much of his business was in said town of Jeffersonville.

6th question. How long after the town of Jeffersonville was laid out, was it before a ferry was established from the said town of Jeffersonville to the opposite shore of the Ohio river?

Answer. I cannot state exactly the precise time, but it was shortly afterwards; I think Marston G. Clark had the first licensed ferry, and Joseph Bowman the next.

7th question. Have those two ferries continued to run and exist in the hands of the various purchasers, one from the other, from that time until the present day?

Answer. I believe they have. I have always so understood it.

8th question. Who are now the occupiers and reputed owners of the said ferries?

Answer. One of the above defendants, Athanasius Wathen, and a man by the name of Strader, another by the name of Shalcross, and another by the name of Thompson, are the present occupiers and reputed owners.

9th question. Did the said agent, Gwathney, know of the existence of said ferries, during the time of his residence in Louisville?

Answer. I have no doubt but that he did; he was in the habit of crossing the river in said ferries, and must have known it.

10th question. Have those ferries been regularly and faithfully kept up from the commencement until the present day?

Answer. I think they have. I have often heard my brother say that the manner in which he kept his ferry, cost him more than it made him, and that nothing but the public good induced him to keep it up, believing that in time it would repay him.

Questions by complainants.

1st. How long since you have heard of the claim of Isaac Bowman to a ferry across the Ohio river from Jeffersonville to the opposite shore?

Answer. I think it was about twenty years ago, when I got the original deed, and went over the river to Warden Pope, for him to examine it.

2nd question, by same. How long has Mr. Wathen had notice of Isaac Bowman's claim to a ferry across the Ohio river at Jeffersonville?

Answer. Some seven or eight years ago, I had a conversation with Mr. Wathen respecting the claim of Isaac Bowman to said ferry, and at that time informed him of the opinion of Warden Pope, of Louisville, of Kentucky, respecting said Bowman's right to a ferry. This conversation took place some time after Mr. Wathen purchased the ferry, but at what time after, I do not know.

3rd question, by same. How much vacant ground is there between Water street and the river?

Answer.—I never looked at it with a view of examining the dis-a nce, but should suppose that at the widest point it was from one

hundred to one hundred and fifty feet to low water mark; and at the narrowest point it never was thirty feet.

Re-examined by Defendants.

1st Question.—Do you know that said Wathen ever had any notice of said claim of Isaac Bowman, other than what is contained in said original deed, and the said opinion of said Warden Pope, until since he built his steam ferry boats?

Answer.—I do not know that he ever had.

2nd Question, by same.—What was the opinion of said Warden Pope, of which said Wathen had notice?

Answer.—Warden Pope told me not to purchase under a view of making money, because said Isaac Bowman had no right to a ferry.

WILLIAM BOWMAN.

Sworn and subscribed to, as above stated.

THOS. WILSON, *J. P.*

Deposition of James W. Henning.

Being duly sworn as above, upon his oath deposes and gives in evidence the following answers to the following questions, to wit:

1st Question.—Are you acquainted with the location of the town of Jeffersonville, Clark County, Indiana?

Answer.—I believe I am.

2nd Question.—Do you profess to be a practical surveyor and plotter and engineer?

Answer.—I do.

3d Question.—Have you been practically engaged in surveying, platting and engineering? and if so, state how long.

Answer.—I have been practically engaged in surveying and platting for eight or ten years last past. And during part of that time have been engaged in engineering.

4th Question.—Look at the map or plat, marked on the back as follows, to wit, in two places "Exhibit H, A, M," in one place "John Douthitt, R. C. C, [seal,]" in one place "Filed May 18th, 1840, H. Bassett, Clerk," and in another place with your own name, being an exhibit in the answer of said *said* Athanasius Wathen, and say if you know who made said plat, and if you ever saw it before?

Answer.—I made the plat myself.

5th Question.—Was said plat made from the field notes and plat of the said town of Jeffersonville, as they stand recorded in the said County of Clark, and State of Indiana?

Answer.—Said plat was so made.

6th Question.—Is said plat, made by you as aforesaid, a correct one, according to the field notes, or references, as they stand recorded in the said County of Clark, as aforesaid?

Answer.—I believe it to be as correct as the state of the record will permit of being made, the said record in the book being somewhat worn; but it cannot be materially incorrect.

7th Question.—Does the crooked black line, running from Front street up the river to the upper end of the town, correctly represent the margin of the water in the Ohio river, as it stood on the thirtieth day of May, eighteen hundred and forty?

Answer.—I believe it does. Mr. Lee and myself made the survey and observation, and my name is written on the lower end of said line, as surveyor.

8th Question.—Do you know what the dark shade line, south of that and south of the yellow shade line, is intended to represent; if you do not know, why did you put it there?

Answer.—I do not know, positively, what it represents; but I found it so recorded, and suppose it represents the line of the water, as laid down by the original surveyor, as the shading usually indicates.

9th Question.—Do you see the certificate of John Douthitt, Recorder, on the back of said plat made by you, certifying the said plat to be a correct copy of the original plan, &c.; and say whether he did it at the time you made said plat, and with the original record before you?

Answer.—I see the certificate, and it was so certified.

10th Question.—What was the stage of the water in the Ohio river when you made the aforesaid water line?

Answer.—I am not very well acquainted with the stage of water at the town of Jeffersonville, but would suppose it was below the medium stage at that time.

J. W. HENNING.

Sworn and subscribed to, as above stated.

THOS. WILSON, *J. P.*

The deposition of Edmund F. Lee.

Edmund F. Lee, being duly sworn as above, upon his oath deposes and gives in evidence the following answers to the following questions, to wit:

1st.—Are you acquainted with the location of the town of Jeffersonville, in the County of Clark, in the State of Indiana?

Answer.—I am.

2nd Question.—Do you profess to be a practical surveyor, plotter and engineer? If so, have you been practically engaged in that business, and how long?

Answer. I profess to be a practical plotter and engineer, and have been practically engaged in said business from eight to eleven years last past.

3rd Question. Look at the aforesaid plot, made as aforesaid by the said James W. Henning, and say whether you assisted said Henning in making these surveys, measurements and observations on the bank of the Ohio river; and if so, state whether the black crooked line, running from Front street up the Ohio river to the upper end of said town of Jeffersonville, truly represents the margin of the water in the Ohio river on the thirteenth day of May, eighteen hundred and forty, which said crooked black line is signed on the lower end, "J. W. Henning, surveyor?"

[Here follows plat.]

Answer. I did assist Mr. Henning in making said measurements and observations; and the said black crooked line correctly represents the margin of the water in the Ohio river on the thirteenth day of May, eighteen hundred and forty?

4th Question. Do you know what the dark shaded line south of the said black crooked line, and south of the black, yellow shaded line represents?

Answer. I do not know; but suppose it was intended to represent a part of the boundary of Jeffersonville, as it was originally run by the surveyor along the margin of the water.

5th Question. What was the stage of the water in the Ohio river on the thirteenth day of May, eighteen hundred and forty?

Answer. I think it was rather below the medium stage; and at the lowest stage of the water in the Ohio river, I have known it was from the edge of Water street to the edge of the water in the river, two hundred and sixty feet, or about that distance.

EDMUND F. LEE.

Sworn and subscribed to as above stated.

THO. WILSON, *J. P.*

Deposition of Lloyd White.

Lloyd White, being duly sworn as above, upon his oath deposes and saith, and gives in evidence the following answers to the following questions, to wit:

1st Question. Are you acquainted with the aforesaid Athanasius Wathen, and with his steam ferry boats; and if so, have you acted as engineer on said boats, and how long have you acted as such engineer?

Answer. I am acquainted with said Wathen, and am acquainted with his said ferry boats, and have acted on said boats as engineer for upwards of five years.

2nd Question. How much per day, on an average the year round, does it cost to run said boats, including the whole of daily expenditures?

Answer. About twenty dollars per day, omitting wear and tear of said boats, but including fuel, hands, oil, and materials used in running said boats.

Questions by Complainants.

1st Question. What is the value of the boat now running, being known by the name of the old boat?

Answer. From four to five thousand dollars.

2nd Question. Do you think Mr. Wathen would take the value of the boats with ten per cent., and give up the ferry?

Answer. I think he would, but I know nothing about it.

(Defendant objects to the question.)

3rd Question. What is the average daily income of the boat?

Answer. When I was collector it ranged between fifteen and thirty-five dollars per day, but that includes the ferriage from both sides of the river; this was the amount of money received on the boat, not including the yearly ferriage paid by some of the citizens of Jeffersonville, which yearly ferriage might, in the last year, if the creek ferried over is included, be two thousand dollars; but it might be more or less; but leaving out the creek, it would perhaps not be over two hundred dollars,—but this is all guess work with me.

LLOYD WHITE.

Sworn and subscribed to as above stated.

THO. WILSON, *J. P.*

Deposition of Charles Steade.

Charles Steade being duly sworn as above, upon his oath gives in evidence the following answers to the following questions, to wit:

1st question.—What is your age?

Answer.—About forty-eight years.

2nd question.—How many years have you lived in and about the town of Jeffersonville?

Answer.—I have lived here over thirty years, perhaps near forty, and nearer forty than thirty.

3rd question.—Who had the first ferries established, from the town of Jeffersonville to the Kentucky shore?

Answer.—I do not know that I recollect exactly, but I recollect that Marston G. Clark had one, and Joseph Bowman one.

4th question.—Have those ferries, from your first recollection of them, been regularly kept in operation up to the present time?

Answer.—As separate ferries they have not been kept up, but they were consolidated and kept up.

5th question.—Have those ferries been in operation since your remembrance of the place?

Answer.—I do not recollect the time, but to the best of my knowledge they have been in operation ever since I lived here.

6th question.—Who are the present occupiers and the reputed owners of said ferries at this time?

Answer.—Mr. Wathen is one, Mr. Shalcross, Strader and Thomson the others.

7th question.—Were you acquainted with the agent who laid out the town, Mr. John Gwathney?

Answer.—I knew John Gwathney, but did not know him to be the agent.

8th question.—How many years did Mr. Gwathney reside at Louisville, Kentucky, opposite to Jeffersonville?

Answer.—I do not recollect how long he lived in Louisville, nor when he went away, but I do recollect of seeing him for a number of years after I came to live in the town of Jeffersonville.

9th question.—Did you frequently see said Gwathney in said town of Jeffersonville?

Answer.—I never saw him but a very few times in the town of Jeffersonville.

Cross-examined by said complainants.

1st question.—Did you ever hear Mr. Gwathney say that Mr. Isaac Bowman had reserved a ferry privilege?

Answer.—I never did to my knowledge.

2nd question.—At what period of time did you first hear of Isaac Bowman having a ferry privilege, from Jeffersonville to the opposite shore?

Answer.—I do not recollect the time, but believe it is about eight or ten years ago, or about the time I purchased an interest in the ferry from White; be that time what it may, it was frequently spoken of by the citizens of town after I purchased; but I do not know whether Mr. Wathen knew it or not.

CHARLES STEADE.

Sworn and subscribed to as above stated. THO. WILSON, *J. P.*

STATE OF INDIANA, CLARK COUNTY, *town of Jeffersonville, to wit:*

I, Thomas Wilson, the above named and signed justice of the peace, do hereby certify, that the foregoing named and signed witnesses, to wit, William Bowman, James W. Henning, Edmund F. Lee, Lloyd White and Charles Steade, were all taken before me as a justice of the peace, in the manner, time and place as above stated in the caption to these said depositions, and in pursuance of the notice above annexed, and that their said evidence was written down by me as detailed by said witnesses, and after written, read over to them, and there by them pronounced correct, and by them severally signed.

Given under my hand and seal, this third day of May, eighteen hundred and forty-one.

THO. WILSON, [L. S.]
Justice of the Peace.

And afterwards, to wit, on Monday, the twenty-fourth day of May, in the year aforesaid, and on the seventh judicial day of the term last aforesaid of the court aforesaid, come the parties by their said solicitors, and the court not being sufficiently advised in the premises, give the parties further day to hear their decision thereon.

And afterwards, to wit, at a circuit court holden before the judges aforesaid, on Tuesday the twenty-fifth day of May, in the year eighteen hundred and forty-one, and being the eighth judicial day of the said May term of said court as aforesaid, come the parties by their solicitors aforesaid, and the court not being yet sufficiently advised in the premises, take this cause under advisement until the next term of this court, to which time this cause is continued.

And be it further remembered, that afterwards, to wit, at a circuit court of the United States within and for the circuit and district aforesaid, begun and holden at Indianapolis aforesaid, before the honorable Jesse L. Holman, district judge of the United States for the district of Indiana, sitting and acting as circuit judge as aforesaid, on Tuesday, the sixteenth day of November, in the year of our Lord one thousand eight hundred and forty-one, and being the second judicial day of the November term of said court, come the parties by their solicitors aforesaid, and the court being sufficiently advised in the premises, dismiss the bill of complaint filed herein at the costs of the complainants.

It is therefore ordered and adjudged by the court now here, that said defendants, as to the said bill of complaint filed herein, go hence without day; and it is further ordered and adjudged by the court, that the said complainants pay and satisfy the costs herein taxed and allowed by the court, at two hundred and fourteen dollars and fourteen cents, within thirty days, or that in default thereof, that they be attached, &c.

And now here come said complainants, by Philip Sweetser, their

solicitor, and pray an appeal from the judgment aforesaid of this court to the Supreme Court of the United States of America. And now here in open court give bond, executed by Samuel H. Patterson, as security, conditioned according to law, for prosecuting said appeal, which bond is in the words and figures following, to wit:

Know all men by these presents, that I, Samuel Patterson, of the county of Clark, and State of Indiana, am held and firmly bound unto Athanasius Wathen, and the Mayor and Common Council of Jeffersonville, of said county and State, or to either of them, in the poenal sum of one thousand dollars, to the payment of which well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents; sealed with my seal, and dated this eighteenth day of November, eighteen hundred and forty-one.

Whereas, at the November term of the Circuit Court of the United Sates, in and for the District of Indiana, begun and holden at Indianapolis, in the State of Indiana, on the third Monday of November, in the year eighteen hundred and forty-one, the said court rendered a final decree in a certain suit in chancery, which had been and then was pending in said court, wherein Isaac S. Bowman, George W. S. Bowman, Brinker, and Mary, his wife, formerly Mary Bowman, Rebecca Bowman, by said Isaac S. Bowman, and said George W. S. Bowman, their next friends, the said Mary and Rebecca being infants, under twenty-one years of age, and Albert T. Burnly were complainants, and said Athanasius Wathen and the Mayor and Common Council of said city of Jeffersonville, were defendants; from which decree said complainants have prayed an appeal to the Supreme Court of the United States, which said appeal has been granted.

Now the condition of the above obligation is such, that should Isaac S. Bowman, George W. S. Bowman, Brinker, and Mary, his wife, and Rebecca Bowman, by their next friends, said Isaac S. Bowman, and George W. S. Bowman, and the said Albert T. Burnly, will and shall well and truly prosecute their said appeal, and pay and discharge all legal costs which have accrued in said cause, and which may accrue in the Supreme Court of the United States, and all damages said complainants may be legally bound to pay in consequence of said appeal. Then the above obligation to be void, else to be and remain in full force and virtue.

S. H. PATTERSON. [L. S.]

Which bond is approved by the court, and said appeal granted.

UNITED STATES CIRCUIT COURT,
for the Seventh Judicial Circuit and District of Indiana, ss.

I, Horace Bassett, clerk of said court, do certify that the within

and foregoing is a true, full and complete transcript of the above entitled cause, remaining of record in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Indianapolis, on this the [L. S.] fourteenth day of December, in the year of our Lord one thousand eight hundred and forty-one.

HORACE BASSETT, *Clerk.*

INDIANA, May Term, 1841.

BOWMAN'S DEVISEES & BURNLEY
vs.
WATHEN & others.

This cause was argued by Messrs. Brown and Sweetser for the complainants, and Mr. Stevens for the respondents.

Opinion of the Court.

The complainants claim a ferry right from Jeffersonville, in Indiana, across the Ohio river to Louisville, in Kentucky, which is in the possession and enjoyment of the defendant, Wathen, who claims one half of it, and which the complainants pray, in pursuance of their right, may be decreed to them.

The complainants, except Burnley, claim, as devisees of Isaac Bowman, and he claims as their assignee. Bowman was attached to the regiment commanded by George Rogers Clark, and to whom the State of Virginia granted one hundred and fifty thousand acres of land, lying northwest of the river Ohio. In the cession of lands to the United States, north of the Ohio river, by the State of Virginia, this tract was reserved. It was located on the Ohio river at the falls, and includes the city of Jeffersonville. Commissioners were appointed by Virginia, and authorised to allot and convey to the officers and soldiers of the above regiment, according to their respective rights, the above tract. To Bowman was conveyed five hundred acres, on a part of which Jeffersonville now stands.

Bowman was a citizen of Virginia, and, it seems, was never in the Territory or State of Indiana. On the 8th of March, 1802, he empowered John Gwathney "to lay off into a town, in any manner he may think proper, one hundred and fifty acres of the above tract, and vest all right and title in discreet persons as trustees of said town. And the attorney was authorised to sell lots, &c., convey to the trustees two acres for a public square, &c., and to do and transact all and any kind of business which may be necessary to carry into effect the foregoing powers."

On the 22nd day of June, 1802, the plan of the town being made, the attorney conveyed to M. G. Clarke and others, trustees of the town, and their successors in office, one hundred and fifty

acres, described by metes and bounds, under certain reservations and conditions, among which was the following: "That the said Isaac Bowman shall have and use, for and in his own behalf, whatever right he may now hold as proprietor to the establishment of one or more ferries."

On the plan of the town, northeast of Front street, on the river, was left an open space, which was marked as commons.

On the 12th October, 1802, William H. Harrison, Governor of Indiana Territory, granted a license to M. G. Clark, one of the grantees in the above deed, *a license* to keep a ferry at the town. And on the 2nd July, 1807, he granted a license to one Joseph Bowman, also, to keep a ferry at the same place.

In 1820, the Legislature of Indiana sanctioned the ferry right of George White, originally granted to him.

Bowman continued to reside in Virginia until his decease, in 1826. He devised his real estate in Virginia, Kentucky, and Indiana, in connection with which this ferry right was named, to his children in certain divisions. Under the will, the complainants named as devisees, took the lands in Indiana, including the ferry right. One of the children of the deceased is still a minor,—and they have all continued to reside in Virginia.

On the 11th May, 1839, the devisees, for the consideration named, of twenty thousand dollars, conveyed the ferry right, and the lands, &c., in Indiana and Kentucky, devised to them by their father, to their co-complainant, Burnley.

The three ferries granted as above stated, are now consolidated into one, and the defendant, Wathen, by conveyances from the original grantees, and those who claimed under them, is vested with one-half of the interest of the ferry. The persons who own the other half are citizens of Kentucky, and cannot be made parties to the suit; and this is assigned, in the bill, as a reason why they are not made parties.

From the answer of Wathen, it would seem that the ferry, by the loss of ferry boats, steam engines, &c., has been unprofitable, until last year. Various grounds of defence are alleged in his answer, and also in the answer of the Mayor and Common Council of the city of Jeffersonville, which will be hereafter considered.

In the commencement of the argument, the complainants' counsel notify the court and the respondents' counsel, that, on the present bill, they shall claim the ferry right only. Indeed, this is distinctly avowed in the bill.

It is objected by the respondents' counsel, that, by uniting the devisees of Bowman and Burnley as complainants, there is a misjoinder, which must be fatal to the right asserted in the present form of proceeding.

The objection is not that there is a want of proper parties, but that Burnley, having received a conveyance by deed, of all the interest of the devisees of Bowman to the right in controversy, the

devisees are not necessary parties. There are cases in which a want of proper parties may be alleged at the hearing. All necessary parties must be before the court, unless it be shown, in the bill, that they are not within the jurisdiction of the court. And although the court will not dismiss a bill which is defective in this respect, they will suspend the decree, and direct the cause to stand over to bring in the proper parties. Milligan v. Millege, 3 Cranch's Rep. 320. In the case of Carneal et al. v. Banks, 10 Wheat. Rep. 181, the court held "the circumstance that some have been improperly joined as defendants in the bill, cannot effect the jurisdiction of the circuit court as to other parties who are properly before it."

And in Wilkinson v. Perry, 4 Russ. Rep. 272, it was decided, that an objection that some of the plaintiffs have no interest, cannot be made at the hearing.

It must be observed that the right asserted in the bill, whether asserted by Burnley or his co-complainants, the devisees of Bowman, is the same right. Burnley, it is true, claims under a deed, but from the facts stated in the pleading it would seem, that at the time this deed was executed, there was possession of the land conveyed, to which this ferry right is appurtenant. And if, as the defendants' counsel insists, this possession was adverse, the deed to Burnley conveyed no title.

It is believed, that in Indiana there is no statute which prohibits the sale of pretended titles. But the statute of 27 Hen. 8th, was in affirmance of the common law. And in Co. Litt. 369, it is laid down, if a person out of possession convey land which is held adversely, the conveyance is void. 9 John. Rep. 55, Partridge v. Strange, Plow 77, Fite v. Doe, 1 Black. Rep. 127.

Now, although the mere ferry right, which is an incorporeal hereditament, may not be capable of an adverse possession, within this principle, except as appurtenant to the land; yet the state of the title was such as to render it prudent, and, as we think, proper, to make the devisees of Bowman co-complainants with Burnley. And there are considerations, independently of this, arising out of the election of the devisees, under the will of their ancestor, as to this ferry right; and other facts connected with their title, which make them necessary parties. But, if this were not the case, the court would permit the complainants, even at the hearing, to strike out the names of the devisees, if necessary to the exercise of jurisdiction. Such an amendment of the bill could not take the respondents by surprise, or subject them to any change in their defence. But if the deed to Burnley be inoperative as a conveyance of the title, the devisees of Bowman would be indispensable parties. If Burnley can set up only an equity, it is necessary for him to make those from whom he claims such equity, parties to the suit. Findlay & others v. Hinde et al., 1 Peters' Rep. 241. 1 McLean's Rep., Smith v. Shane, 31.

We think that the objection of a misjoinder, as made by the defendants, cannot avail them.

The rights of Riparian proprietors are so well defined, and have been so fully investigated by the Supreme Court, that little need now be said to show their nature and extent. In the cases of the city of Cincinnati v. the Lessee of White, 6 Peters, 431; Barclay & others v. Howell's Lessee, ib. 498; and the Mayor &c., of New Orleans v. the United States, 10 Peters, 662, the doctrine is examined.

Where land is bounded by a water course, these rights attach to the proprietor. And it is immaterial whether the water course be a navigable river or a smaller stream; or whether the proprietor be a corporation or a natural person.

In the case of Tyler v. Wilkinson, 4 Mason 66, Rep. 397, Mr. Justice Story says, "prima facia every proprietor upon each bank of a river is entitled to the land covered with water, in front of his bank, to the middle thread of the stream." The judge is here speaking of a river which is not navigable, and such is undoubtedly the common law. In the case of the royal fishery in the river Banne, Davies' Rep. 152, 155, 157, it was resolved, that by the rules and authorities of the common law, every river where the sea does not ebb and flow, was an inland river not navigable, and belonged to the owners of the adjoining soil. The same doctrine is found in Carter v. Murcat, 4 Burr. Rep. 2162, and in the King v. Wharton, 12 Mod. 510. And Sir Mathew Hale, in his treatise de jure maris, &c., Hargraves' Law Tracts, lays down the law generally, that fresh rivers, of what kind soever, do, of common right, belong to the owners of the adjacent soil; but he admits that such rivers may be under a servitude to the public, and regarded as common highways. This doctrine is fully recognised by Chief Justice Kent in the case of Palmer v. Mulligan, 3 Cain's Rep. 318.

We apprehend that the common law doctrine as to the navigableness of streams, can have no application in this country; and that the fact of navigableness does in no respect depend upon the ebb and flow of the tide. Where a stream which is clearly not navigable, forms the boundaries of proprietors on each side of it, under the common law, each may claim to the middle of the stream. But this right cannot be exercised to the injury of other rights of the same nature. On navigable streams, the Riparian right, we suppose, cannot extend, generally, beyond low water mark. For certain purposes, such as the erection of wharfs and other structures for the convenience of commerce, and which do not obstruct the navigation of the river, it may be exercised beyond this limit. But in the present case this inquiry is not important. It is enough to know that the Riparian right on the Ohio river extends to the water, and that no supervening right over any part of this space can be exercised or maintained, without the consent of the proprietor. He has the right of fishery, of ferry, and every other

right which is properly appurtenant to the soil. And he holds every one of these rights, by as sacred a tenure as he holds the land from which they emanate. The State cannot, either directly or indirectly, divest him of any one of these rights, except by a constitutional exercise of the power to appropriate private property for public purposes. And any act of the State, short of such an appropriation, which attempts to transfer any of these rights to another, without the consent of the proprietor, is inoperative and void. It can afford no justification to the grantee against an action of trespass.

In coming to this conclusion, we have deemed it unnecessary to look particularly into the laws of Virginia, under which the title in question was derived, to the compact between Virginia and the other States, at the cession of the territory north-west of the Ohio, or to the ordinance of 1787. The principles laid down are of common right. In this country, they are every where recognised. They belong as well to the civil as the common law.

The title of Isaac Bowman was derived from the State of Virginia, not only before Indiana was known as a Territory, but before the organization of the North-western Territory. His rights, whatever they were, can have been in no respect affected by the direct action of the Territorial government, or of the State government which succeeded it.

When a State grants land, it may impose any restrictions, which shall be deemed proper, on the grantee. But where the grant is without restriction, as in the present case, the grantee holds the land and all the appurtenances which belong to it.

Some of the rights which appertain to the soil are of a public nature, and the use of them are, consequently, subjects of legal control. Of this character is the right of ferry, the right of wharfage, and others which might be enumerated. Any man has a right to keep ferry boats for his own convenience upon his own land, but he is under no obligation to afford any amount of accommodation to the public. And for this the government is not only authorised, but bound, to make suitable provision.

On this ground, licenses to keep ferries are granted, and the grantees are bound to keep suitable boats, give the requisite attention, and in all other respects to comply with the requirements of law. In Indiana, and in many other States, the grantee of a ferry is required to give bond and security for the performance of his duties. His charges are also regulated by law.

To protect the grantee in his rights, and remunerate him for the money expended and the responsibilities incurred, no other person, without a license, is permitted to set up a rival ferry which shall lessen the profits of the first one. Nor indeed, can the State consistently, if at all, grant a new ferry to the material prejudice of an old one, unless the public accommodation shall require it.

The Legislature of Indiana have not assumed the right to grant

a ferry license, except to the proprietors of lands on the borders of rivers, &c. In 1807, a law to this effect was passed, authorising the Court of Common Pleas to make the grant. In 1815, a law authorised the county courts to establish ferries on the Ohio river, under the above restriction, and required bond to be given, &c. And in 1817, the Board of County Commissioners were empowered to grant licenses for ferries to the proprietors of lands on the margin of a river, &c. The third section of this act provided, "that when the land on the margin of a river should be a public common of a town, that the Board of Commissioners might grant a ferry license to any proprietor of land next adjoining the said public common." But at the same session, a supplemental act was passed, declaring that nothing in the said 3d section should affect the right of any town or corporation, or the right of any person, proprietor of any town, by reason of any grant of ferry license to a person who was not a proprietor of land on the margin of the river."

By these acts, the Legislature of the State of Indiana has fully recognised the ferry right of the proprietor on the margin of the river, as above stated. And indeed, the act of 1817 declares, that such right shall not be prejudiced by the grant of a ferry license to one who is not a proprietor of lands adjoining the river.

In the argument it was supposed, that the recognition of this principle would operate most injuriously to the public. That it would be in the power of any proprietor, to prevent the establishment of a ferry upon his land. But it will be observed, that the same principle applies to the establishment of public roads, canals, and almost every description of public improvement. No man's property can be taken for these purposes against his will, unless compensation be made. And this is the rule in regard to ferry ways. These, no more than the other real estate of the proprietor, can be taken, without his consent; unless they shall be taken and paid for, under the power of appropriation.

The respondent's counsel insists, that if the legal right of the complainant, Burnley, be as stated in the bill, he has full and adequate relief at law.

There can be no doubt, that where an injury is done to an established ferry, an action at law would be the appropriate mode of redress. But that is not the case made in the bill. What redress can an action at law give to the complainants, should the right asserted be sustained? The defendant, Wathen, under color of right, at least, is in possession of the ferry. He claims under the original grantees, and in virtue of a right which has been exercised and sanctioned by public authority nearly forty years. This right has the proprietorship of the soil to support it. The claim in the bill is hostile to this, and if sustained must rest upon the reservation in the deed of Bowman, by his attorney, to the original trustees of the town. And on this ground the exclusive ferry right, appurtenant to the hundred and fifty acres, is asserted. Since 1802, this

right has lain dormant. For ought that appeared to the public, or to the owners of the different ferries established at Jeffersonville, it had been abandoned. Under such circumstances, it was the duty of the public authority to provide for the general accommodation. This was done, and we think, under the circumstances, was rightfully done. And now that this dormant ferry right is set up, if its validity be admitted, how can effect be given to it? not, certainly, by an action at law. This can neither enjoin the defendants, nor transfer their receipts, nor their ferry rights, to the complainants. And if relief be given, it must be in one of the modes here stated. It is, therefore, clear that the remedy is not at law.

A great number of other questions are made in the answer, and by the defendant's counsel in argument, more or less important; but they will be passed over, and the great questions in the cause will be considered. And these are,—the nature and extent of the ferry right reserved by Bowman; and the lapse of time.

This deed was executed by Gwathney, the agent of Bowman. On looking into his authority, which is in writing and in evidence, there can be no doubt he possessed the power to make the deed. And now we will consider the reservation, or exception, as it is called in the deed.

As this is an important point in the case, it may be proper to advert to such parts of the deed, as can have any bearing on the question under consideration. The deed conveys to certain persons named as trustees of the town of Jeffersonville, and to their successors in office, to the use, interest and purposes hereinafter expressed, and to and for no other use, interest or purpose whatever; that is to say, the said John Gwathney, as attorney in fact, for the said Isaac Bowman, shall have, retain, possess and exercise, the sole, entire and exclusive right and privilege of making applications of the monies arising from the sale of the lots of the said town; and shall also have and use, for and in behalf of the said Isaac Bowman, whatever right he may now hold as proprietor to the establishment of one or more ferries." The deed then states the boundary of the one hundred and fifty acres, beginning at a stake on the bank of the Ohio river, running thence up the river and binding thereon, &c.; to have and to hold the before mentioned tract, or parcel of land, under the conditions, limitations, reservations and restrictions before mentioned, and the said public square aforesaid, for the purposes aforesaid, to the said trustees and their successors in office, forever. Then follows the clause of warranty.

In the body of the deed, is stated that the attorney had laid off the one hundred and fifty acres in a town, and drawn a plan of it, designating two acres of ground as a public square, with convenient streets and commons, and called it Jeffersonville.

These are all the parts of the deed which can have any supposed bearing upon the reservation of the right in question.

From the trustees, Bowman received a conveyance for lots, 190,

191 and 192, which are bounded on the river, and which were retained by him, and passed to his devisees, who have conveyed the same to the complainant Burnley. The title to these lots, however, is in no respect connected with the ferry right under consideration.

From Front street to the upper limit of the town, an open space is left, between Water street and the river, which, on the plan of the town is called commons; on these commons is the landing and ferry ways of the defendants.

There can be no doubt that this designation on the plan of the town, and also the two acres for a public square in the centre, taken in connection with the deed of Bowman to the original trustees, which deed and plan were recorded, constituted a dedication of the square and the commons to the public. That the trustees could have no succession, they not being incorporated, is no objection to this view. The trustees, or at least some of them, are believed to be still living; to the purchasers of lots they conveyed titles, as they undoubtedly had the power to do.

No act of dedication could be more formal, or more solemn, than the deed and the plat in this case; and if any confirmation were necessary, the use of the commons and of the public square for thirty-eight years, as such, may be referred to. This public use would, of itself, be evidence of a dedication; on the fact of dedication there can be no doubt.

It is insisted that the reservation of the ferry right, being inconsistent with the grant, is void; but is it inconsistent with the grant?

The commons extended from Water street to the river, and the fee to this space, by the dedication, as completely passed out of Bowman, and vested in the public, for the use declared, as if the most formal conveyance had been executed. But in addition to this, the fee was actually conveyed to the original trustees; the town then, when it became incorporated, and indeed before, was entitled to the use of these commons to the water; but that this use is not at all inconsistent with the use of the commons for a ferry landing, is shown by the fact that they have, from the first, been used as such.

The defendants' counsel suggests that this ferry right can only subsist in connection with the soil.

It is a right connected with the soil and grows out of it, the same in principle as an advowson or rent. It is an incorporeal hereditament and lies in grant, Coke 335–6; when the ownership of it is not connected with the ownership of the soil, no one can have seizen of it as of land; but still it is classed with real estate, and is subject to the laws which govern the realty; and so is rent or an advowson.

An advowson appendant may become in gross by various means. 1, If the manor to which it is appendant is conveyed away in fee simple, excepting the advowson. 2, If the advowson is conveyed away without the manor to which it is appendant. 3, If the proprietor of an advowson appendant, presents to it as anadvowson in gross.

Dyer 103; Cruise's Di. 3., vol. 4. The existence of an advowson, like that of every other incorporeal hereditament, being merely in idea and abstracted contemplation, it is not capable of corporeal seizen or possession, Cruise's Di., 5.

A person having free warren over certain lands, may alien them, reserving the warren; Dyer, 30, 6., pl. 209. A rent may be reserved upon a grant of an estate in remainder or reversion; for though the grantee cannot distrain during the continuance of the particular estate, yet there will be a remedy by distress, whenever the remainder or reversion comes into possession; 1. Inst., 47. a.

Rent may be reserved on a conveyance of lands in fee simple, and this is called a fee farm rent.

The statute of Indiana recognises the rights of the proprietors of lands on the margin of the river; and to none others can ferry rights be granted. And it is supposed that this limits the right to the grantee of the soil; but this construction of the statute cannot be sustained.

By the statute nothing more could have been intended, than to reserve from violation the right of the Riparian proprietor; this right is appurtenant to the soil, but he may convey it, and still retain the fee in the land; and by such conveyance, the grantee holds the right which the statute was designed to protect; he has the use of the soil for a ferry landing, and for ferry ways, so far as the public accommodation is concerned, as fully and completely as could be exercised by the grantee of the soil; but for no other purpose has he a right to enter upon the soil. Now it must be perceived that the right thus possessed is as much within the policy of the statute, as if it were a fee simple in the soil; indeed it is within the letter of the statute; for the grantee of such a right may in the strictest sense be considered, for all the purposes of the ferry, "the proprietor of land on the margin of the river."

This right, as before remarked, is real estate; it descends to heirs as such, is subject to dower, and to all the incidents of real property.

We come now to consider the operative words of the reservation. "And (the attorney) shall also have and use, for and in behalf of the said Jacob Bowman, whatever right he may now hold as proprietor, to the establishment of one or more ferries."

That this reservation gave to Bowman, during his life, this ferry right, there can be no doubt. We have shown that it may be separated from the fee in the soil, and still be within the policy and language of the statute; but Bowman is now deceased, and the inquiry is, was the right reserved to his heirs?

It is admitted that the word heirs is not necessary in every possible case, in a reservation or grant, to give an estate of inheritance.

If the father infeoff the son, to have and to hold, to him and to his heirs, and the son infeoffeth the father, as fully as the father infeoffed him, by this the father hath a fee simple; Coke on Lit., 501.

When the act of disposal relates to another thing, that thing becomes, in a manner, part of the disposition, and in such case the mind is carried to the idea of an heir, as clearly as if the word "heir," had been invested in the feoffment; 3. Bac., Abr., 534.

When a man, seized of land in fee, made lease for years, reserving rent to him and his assigns *during the term*, it was adjudged, that this reservation should not determine by the death of the lessor, but the rent should go to the heirs; Sochaverell Fraggutt, 2. Saund., 367. Hazgr., n. 8. 47 a. Suryv. Brown, Latch. 99, 100. Ventr., 163. 2 Lev., 13.

If one coparcener or joint tenant, releases all his right to another, it will pass a fee without the word heirs. So if one coparcener grants a rent to the other, for equality of partition, an estate in fee simple in the rent will pass, without the word heirs; for as the rent comes in lieu of the inheritance, it has as strong a relation to the inheritance as if the word heirs had been used. 1 Inst. 10. 4, Cruise's Di. 295.

But these are exceptions to the general rule, and the cases put can admit of no doubt as to the intention of the parties. We will now cite cases where the word heirs, in reservations, has been held necessary to constitute an estate in fee simple.

If a rent be reserved to the lessor and his assigns, it will determine at his death; for the reservation is good only during his life. So if a rent is reserved to him and his executors, he having the freehold, it will be determined at his death; because the reversion to which the rent is incident descends to the heir. 1 Inst. 47, a.; 1 Ventr. 161, 3 Cruise's Di. 319. If one grant lands or tenements, reversions, remainders, rents, advowsons, commons, or the like, and express or limit no estate, the lessee or grantee hath an estate for life only. Dyer 300.

A reservation sometimes operates as a grant, but this cannot be the case with an exception.

An exception, says S. Touch., 77, is where the grantor excepts something out of that which he has before granted, by which means it does not pass by the grant, and is reserved from the things granted. And note, says Lord Coke on Litt., 412, a diversity between an exception, which is ever a part of the thing granted and of a thing in esse, for which exceptio salvo, praeter, and the like, be apt words, and a reservation, which is always of a thing not in esse, but newly created or reserved out of the land or tenement demised. Paterit enim quis rem dare et pastem rei ratinere, vel partem de pertinentiis, et illa pars quam ratinet rem percum eo est et semper fuit."

Here Coke states, that a reservation is always of something not in esse; but the inaccuracy of this is shown in his own words, in a different section. "Reserve, he says, cometh of the latin word reservo, that is, to provide for store; as when a man departeth with his land, he reserveth or provideth for himself a rent for his

own livelihood. And sometimes it hath the force of saving or excepting. So as sometime it serveth to reserve a new thing, viz: a rent, and sometime to except part of the thing in esse, that is granted." 143, a.

The words, exception and reservation, are used synonimously in grants, and have the same effect. The effect of the deed does not depend upon the use of the one or the other of these terms, but on the facts which they represent.

In the case of Greenleaf's lessee v. Birth, 6; Peter's Rep. 310, the court say, in order, therefore, to ascertain what is granted, we must first ascertain what is included in the exception; for whatever is within the exception is excluded from the grant.

Suppose, in conveying to the trustees the one hnndred and fifty acres, the attorney of Bowman had excepted, from the operation of the deed, any given number of lots, as designated on the plan of the town, would these lots have passed by the deed. Being excepted out of the land conveyed, they could not have passed. They would then have remained in Bowman, unaffected by the deed. Of this it is supposed no one can doubt. And the only enquiry now is, whether the ferry right reserved is of the same nature, in this respect, as a part of the land. In what does it differ? It is appurtenant to the soil, and constitutes no inconsiderable part of its value. As has been shown, it is susceptible of a different ownership from the soil. It is still a right growing out of the soil, and subjects it to the servitude in whosesoever hands it may come. Although an incorporeal hereditament, in contemplation of law, it is property, real property. It passes by deed, is assets in the hands of heirs, and in all respects is subject to the laws which regulate real estate.

It is readily admitted, if this were a grant to Bowman, the words of the reservation would give him but a life estate. But the right remained in Bowman. He did not part with it; and it remained in him the same as before the deed to the trustees was executed. He conveyed the land, to which this right was appurtenant, but he conveyed it charged with the servitude of this ferry right, which he excepted or reserved.

If Bowman derived his right from the deed, words of inheritance would have been essential, to give him a fee simple. But he has the same ferry right after the land was conveyed as before it. He excepted it out of the deed, and nothing more was necessary to retain the right, unimpaired by the conveyance.

It is insisted, that a license to keep a ferry is personal, and cannot be assigned. That as the right of the defendant, Wathen, rests upon transfers from the original grantees, and has no other foundation, it must be held invalid.

In this respect no difference is perceived between a ferry franchise, the franchise of a toll-bridge, a turnpike or rail road, or any other franchise of the same nature. Certain privileges are given

by the State, and the grantee becomes bound to afford the proposed public accommodation. It is true, the grant is made in the one case to a private individual, and in the others to corporations. But as it regards any matter of public confidence, it would seem to apply as strongly to the individuals incorporated, as to the grantee of the ferry.

But the grantee of the ferry has a right appurtenant to the soil, which, by the law, is made an indispensable prerequisite to a ferry license. Now we have shown, that the ownership of this right may be separated from the ownership of the soil. And if this may be conveyed by the grantee, before the ferry license is obtained, may it not be conveyed afterwards? And in this conveyance may not the ferry grant be included? The public can have no claim on the grantee beyond the requirements of the law. And it is immaterial whether these are fulfilled by the grantee, or his assignee. It is probable, that the assignee gives a bond and security, as the law requires, or indemnifies the grantee. There must be some settled practice on this subject, which has been so sanctioned as to become a rule of property. However this may be, there would seem to be no doubt that the ferry franchise, with all that belongs to it, may be taken by descent or by conveyance, the same as other interests, which pertain to the realty.

Where an office is conferred, which implies personal confidence and a capacity to discharge public duties, no assignment can be made of it. But this has no analogy to the franchise in question.

This question, however, does not depend upon general principles; the statute of Indiana authorises the transfer of the ferry license, and points out the duties of the assignee. If the ferry shall not be kept up, it may be vacated and annulled, in a mode of proceeding authorised by the statute. But the license is granted without limitation, and subject only to the condition, that the requirements of the law shall be observed.

The lapse of time is the only question that remains for consideration.

The ferry franchise claimed by the defendant, Wathen, originated in October, 1802. This right was sanctioned by the Legislature of Indiana, by an act, passed December, 1820. Another ferry license granted subsequently to 1802, and to a different person, is now and has been for several years past, by mesne conveyances, vested in the defendant, Wathen, and others, who are not made parties to this suit. Wathen owns one half the interest in the consolidated ferry. This ferry has been regularly kept up, and the requirements of the law observed, from 1802 up to this time; making thirty-nine years, and nearly thirty-eight years to the time of filing the bill.

Bowman's deed to the trustees, in which the ferry right was excepted, was recorded by the recorder of Clark county, shortly after it was executed. Bowman continued to reside in Virginia until his

decease, in 1826, and his devisees still reside there. The agent, Gwathney, who executed the deed, was, at the time, a citizen of Louisville, where he continued to reside many years, being often in Jeffersonville, saw the ferry in operation and frequently crossed in it. One of the witnesses states, shortly after the town of Jeffersonville was established, this reserved ferry right was spoken of; and another witness, some two or three years after 1826, heard the same right mentioned among the citizens. At this time Wathen was a citizen of Jeffersonville.

Against the operation of the statute of limitations and of lapse of time, the complainants counsel insist:

1. That the statute does not run against nonresidents.

2. That time, in equity, is applied by analogy to the statute, and that it cannot bar the complainants' right, as Bowman was not only a nonresident, but several of his devisees, at his death, were infants, and some of them are still minors.

3. That the ferry right set up by the defendant, Wathen, was not established by competent authority; and that the sanctions since given to it, were in violation of the rights of the complainants, and were consequently void.

4. That the defendant, Wathen, stands as trustee in relation to the right of the complainants, and that in such a case, neither the statute of limitations nor the lapse of time can have any effect.

That the statute does not run against nonresidents, must be admitted. It only operates against those who are residents of the State, or who may come within its jurisdiction. And it must also be admitted, that by analogy the statute is applied in equity as at law; and that in such cases it does not bar the rights of infants. But time, in equity, often operates as a bar in a case where, at law, the statute could have no effect. And the case under consideration may illustrate this principle. The lapse of time is open to the defendant as a ground of defence, although by reason of the nonresidence of the complainants, the statute could have no effect against them at law. This doctrine is fully established.

In the case of Piatt v. Vattier and others, 1 McLean's Rep. 160, many authorities on this point are cited. That case was similar to this one. The holder of the title was a nonresident, and his right was not barred by the statute. In the case of Marquis of Chalmondeley v. Lord Clinton, 2 Jacob & Walker, 1, 138, the court say, "At all times courts of equity have, upon general principles of their own, even where there was no statutable bar, refused relief to stale demands, where the party has slept upon his rights and acquiesced for a great length of time. And this doctrine was sanctioned by the Supreme Court, on an appeal of the above case, Piatt v. Vattier, 9 Peter's Rep., 416. It is also sustained in the following cases: Beechford v. Wade, 17 Ves., 86; Barney v. Ridgard, 1 Cox, Cas., 145; Blennerhassett v. Day, 1 Ball & Beatt, Rep., 104; Hardy v. Reeves, 4 Ves., 479; Harrington v. Smith,

1 Bro. Par. Cas., 95; Kane v. Bloodgood, 7 John's Ch. Rep., 93; Prevost v. Grate, 6 Wheat. Rep., 481; Hughes v. Edwards, 9 Wheat. Rep., 489; Willison v. Matthews, 3 Peter's Rep., 44.

Is the franchise of the defendant invalid on the third ground assumed? Was the license granted in 1802 inoperative, and were the sanctions of the Legislature subsequently given to it of no effect?

The license was first granted by the Governor of the Territory, without any express authority of law. At that stage of the Territorial Government, he was, in connection with the judges, authorized to adopt laws of the States, but not to enact them. No law, it seems, could be found applicable to the public emergency, and a resolution was adopted, under which the license in 1802 was granted.

In 1807, the Territorial Legislature provided, "that all ferries now kept by license from the Governor, shall be, and are hereby declared to be established ferries," &c. Another confirmatory act was passed by the Legislature, the 26 December, 1815. And afterwards, in December, 1820, the Legislature of the State confirmed, by a special act, the franchise under which the defendant claims.

It may be proper here to remark, that the case cannot be made to turn upon the validity of the defendant's right, unconnected with the lapse of time. But this will be more appropriately considered under the next head.

The right from the first was, at least, prima facia. And it may be a matter of doubt, whether the power exercised by the Governor, under the emergency which existed, ought not to be sustained. And this view is greatly strengthened, if indeed it be not placed beyond doubt, by the confirmatory acts of the Territorial and State Legislatures. But it is supposed that the ferry right reserved by Bowman, renders the acts of the Governor and of the Territorial and State Legislatures inoperative and void. And this, upon the ground that private property cannot be appropriated for the public use, without compensation.

Where was this right of the complainants for thirty-eight years, while this ferry has been kept up by the enterprise of its owners, and enjoyed by the public? All that could be known of it, by searching the county record, was, that Bowman reserved it in his deed to the trustees. But what evidence was this of his continued ownership? That an individual did not convey an interest that he might have in land to S., is no very satisfactory evidence some twenty or thirty years afterwards, that he had not sold it to some other person. At best, it was a right that existed in idea, an abstraction—something that could neither be seen nor felt—of which no one could have corporeal possession. And yet this intangible thing, in the estimation of the counsel, becomes the vis major, to the power of the Territorial Government and the sovereignty of the State. It resists, and effectually resists, all action for the public

good. That such cannot have been the effect of this ferry right, under the circumstances, is very clear. No such dormant interest, practically abandoned, can be asserted after the lapse of nearly forty years, to nullify the action of the government. If it were not barred by the lapse of time, it could not make the grantees of the government trespassers. Where a case of prima facie right to a ferry license is made out, the State is in duty bound to grant a license, should the public convenience require it. And if there be any conflicting right, the owner is bound to assert it in a reasonable time. If he fail to do this, the other title is strengthened by time, and may bar that which at first was a paramount title.

But is the defendant, Wathen, prohibited from setting up this defence, by the relation he bears to the complainants' title? Is he the cestui trust of the complainants, or did those under whom he claims stand in that relation to Bowman?

That the statute does not run against an established and continuing trust, is clear. For in that case, the possession of the trustee is consistent with the right of the cestui-que trust; and neither the statute of limitations nor the lapse of time can, in such a case, operate in favor of the possession of the trustee. But where his possession is hostile, openly and avowedly hostile, the rule is very different.

There can be no stronger case put to illustrate this doctrine, than that of landlord and tenant. On general principles, the tenant is not permitted to dispute his landlord's title. Having entered under that title, he can set up no adversary title to protect his possession. And yet, if he publicly disclaim his landlord's title, and profess to hold under a hostile title, the statute of limitations will begin to run from the time of such disclaimer. This doctrine is sanctioned in the case of Willison v. Watkins, 3 Peter's Rep. 47—8. In that case the court say, the same principle applies to mortgagor and mortgagee, trustee and cestui-que trust, and generally to all cases where one man obtains possession of real estate belonging to another, by a recognition of his title. 6 Johns. Rep., 272; Blight's lessee, v. Rochester, 7 Wheat. Rep., 535, 549.

Where the trustee denies the title of the cestui-que trust, the statute will operate. To prevent this, the trust must be subsisting. Kane v. Bloodgood, 7 John. Ch. Rep., 90; Lockey v. Lockey, Prec. in Ch., 518; Harmood v. Oglander, 6 Ves., 199; Havenden v. Lord Annesley, 2 Sch. & Lef. 630. The right under which the defendant claims, from its origin, has been hostile to that asserted by the complainants. So far as the defendant has become seised of any part of the soil bounded by the river, included in the deed of Bowman to the trustees, it might be contended that he was seised to the use of the complainants. But, the claiming and exercising of the ferry franchise is utterly inconsistent with the right set up under Bowman. They cannot both exist. The one necessarily excludes the other; and by consequence they are hostile to

each other. An uninterrupted possession has been held by the defendant, and those under whom he claims, of thirty-nine years; of thirty-eight years before the commencement of this suit, and about twenty-four years before the decease of Bowman. And what are the circumstances relied on to obviate the effect of this lapse of time? The nonresidence of Bowman, his death, and the infancy of some of his devisees.

As before remarked, nonresidence saves the operation of the statute, but not the effect of time. That Gwathney, the agent of Bowman, who executed the deed to the trustees, and who superintended the sale of the town lots, and specially reserved this ferry right, as attorney in fact for Bowman, to be used for him, remained many years a resident at Louisville, after the execution of the deed, is an important fact. He was the special agent of Bowman, as appears from the deed, not only as regards the Jeffersonville property, but of this right in particular. He saw the ferry of Clark in operation, in a very short time after the deed was executed; was frequently in Jeffersonville, crossing in the ferry, and it does not appear that he ever remonstrated against its establishment, or attempted to set up the right reserved to his principal. And with the same indifference, he daily witnessed the operations of this and the other ferrys, for fifteen or eighteen years. A notice to the agent is notice to the principal. 13 Ves., 121; 1 Ves., 62; 1 Term Rep., 16; Ambl. 626; 4 Term Rep., 88. And the rule here applies with peculiar force. For there is a strong probability that Gwathney reserved this ferry right, without any special instructions from Bowman. He was then peculiarly fitted to protect it, and it was his duty to do so. The lapse of time could not more strongly have operated against the complainants' title, had Bowman resided in Louisville instead of his agent.

There is another consideration entitled to great weight, and that is, the nature of the right. It was one connected with the public accommodation, and which the owner must have known, unless exercised, might be lost. By the 2 section of the act of the 17th September, 1807, the Court of Common Pleas was authorized to discontinue a ferry, if not used for twelve months.

The foundation of the right was appurtenant to the soil, but the exercise of it depended upon the sanction of the public authority. Diligence was required then, not only in procuring the public sanction, but also in keeping up the ferry. But nothing was done, until a very short time before the bill in this case was filed. A demand was then made of the defendant, Wathen, that he would surrender the ferry and his boats, &c., on the terms stated in the bill.

When the ferry was first established, and for many years subsequently, it was not profitable. To some of the proprietors, it seems to have been rather a source of expense than profit. And this may be a reason why Bowman's right was not asserted. But now, that